99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT 99-699
Part 2

FAMILY AND MEDICAL LEAVE ACT OF 1986

AUGUST 8, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HAWKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

DISSENTING AND SEPARATE DISSENTING VIEWS

[To accompany H.R. 4300 which on March 4, 1986, was referred jointly to the Committee on Education and Labor and the Committee on Post Office and Civil Service]

[Including Cost Estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 4300) to entitle employees to parental leave in cases involving the birth, adoption, or serious health condition of a son or daughter and temporary medical leave in cases involving inability to work because of a serious health condition, with adequate protection of the employees' employment and benefit rights, and to establish a commission to study ways of providing salary replacement for employees who take any such leave, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Family and Medical Leave Act of 1986".

(b) TABLE OF CONTENTS.—

TITLE I—GENERAL REQUIREMENTS FOR FAMILY LEAVE AND TEMPORARY MEDICAL LEAVE

Sec. 101. Definitions.
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Sec. 103. Family leave requirement.

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Sec. 104. Temporary medical leave requirement.
Sec. 105. Limitation on combined leave periods.
Sec. 106. Certification.
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Sec. 108. Prohibited acts.
Sec. 109. Administrative enforcement.
Sec. 110. Enforcement by civil action.
Sec. 111. Investigative authority.
Sec. 112. Relief.
Sec. 113. Notice.

TITLE II—PARENTAL LEAVE AND TEMPORARY MEDICAL LEAVE FOR CIVIL SERVICE EMPLOYEES

Sec. 201. Parental and temporary medical leave.

TITLE III—COMMISSION ON PAID FAMILY AND MEDICAL LEAVE

Sec. 301. Establishment.
Sec. 302. Duties.
Sec. 303. Membership.
Sec. 304. Compensation.
Sec. 305. Powers.
Sec. 306. Termination.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Effect on other laws.
Sec. 402. Effect on existing employment benefits.
Sec. 403. Encouragement of more generous leave policies.
Sec. 404. Regulations.
Sec. 405. Effective dates.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the number of single-parent households and two-parent households in which the single parent or both parents work is increasing significantly,

(2) it is important to the development of the child and to the family unit that fathers and mothers be able to participate in early childrearing and the care of their children who have serious health conditions,

(3) the lack of employment opportunities to accommodate working parents can force individuals to choose between job security and parenting, and

(4) there is inadequate job security for some employees who have serious health conditions that prevent them from working for temporary periods.

(b) PURPOSES.—The Congress therefore declares that the purposes of this Act are—

(1) to balance the demands of the workplace with the needs of families, and to promote stability and economic security in families,

(2) to entitle employees to take reasonable leave for medical reasons, for the birth or adoption of a child, and for the care of a child or dependent parent who has a serious health condition, and

(3) to accommodate the legitimate interests of employers.

TITLE I—GENERAL REQUIREMENTS FOR FAMILY LEAVE AND MEDICAL LEAVE

SEC. 101. DEFINITIONS.

For purposes of this title the following terms have the following meanings:

(1) The terms "commerce" and "industry or activity affecting commerce" mean any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include "commerce" and any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947 (29 U.S.C 141 et seq.).

(2) The terms "employ", "person", and "State" have the meanings given such terms in sections 3(g), 3(a), and 3(c), respectively, of the Fair Labor Standards Act (29 U.S.C. 203(g), 203(a), 203(c)).

(3) The term "employee" means any employee as defined in section 3(e) of such Act who is employed (by the employer with respect to whom benefits are sought under this section) for not less than 3 consecutive months or not less than 500 hours, whichever occurs earlier, except that such term does not include any Federal officer or employee covered under subchapter III of chapter 63 of title 5, United States Code (as added by title II of this Act).

(4) The term "employer"—

(A) means any person who (i) employs 15 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year, and (ii) is engaged in commerce or in any industry or activity affecting commerce;

(B) includes (i) any person who acts directly or indirectly in the interest of an employer with respect to one or more employees, and (ii) any successor in interest of such an employer; and

(C) includes any public agency, as defined in section 3(x) of the Fair Labor Standards Act (29 U.S.C. 203(x)); and employees of any such employer shall be deemed to be employees engaged in commerce.

(5) The term "employment benefits" means all benefits (other than salary or wages) provided or made available to employees by an employer, and includes group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a policy or practice of an employer or by an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)).

(6) The term "health care provider" means—

(A) any person licensed under Federal, State, or local law to provide health care services, or

(B) any other person determined by the Secretary to be capable of providing health care services.

(7) The term "reduced leave schedule" means leave scheduled for fewer than an employee's usual number of hours per workweek or hours per workday.

(8) The term "Secretary" means the Secretary of Labor.

(9) The term "serious health condition" means an illness, injury, impairment, or physical or mental condition which involves—

(A) inpatient care in a hospital, hospice, or residential health care facility, or

(B) continuing treatment or continuing supervision by a health care provider.

(10) The term "son or daughter" means an individual who is—

(A) a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, and

(B)(i) under 18 years of age, or

(ii) 18 years of age or older and incapable of self-care because of mental or physical disability.

(11) The term "parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, or a legal guardian.

SEC. 102. INAPPLICABILITY.

The rights provided under this title shall not apply with respect to employees of any facility of an employer at which fewer than 15 employees are employed if the combined number of employees employed by the employer within 200 miles of the facility is fewer than 15.

SEC. 103. FAMILY LEAVE REQUIREMENT.

(a) IN GENERAL.—(1) An employee shall be entitled to a total of 18 workweeks of family leave during any 24-month period—

(A) because of the birth of a son or daughter of the employee,

(B) because of the placement of a son or daughter with the employee for adoption or foster care, and

(C) in order to care for the employee's son, daughter, or dependent parent who has a serious health condition.

(2) The entitlement to leave under paragraphs (1)(A) and (1)(B) shall expire at the end of the 12-month period beginning after the date of such birth or placement.

(3) In the case of a son, daughter, or dependent parent who has a serious health condition, such leave may be taken intermittently when medically necessary.

(b) REDUCED LEAVE.—Such leave may be taken on a reduced leave schedule, in which case—

(A) the total period during which the 18 workweeks may be taken may not exceed 36 consecutive workweeks, and

(B) such leave shall be scheduled so as not to disrupt unduly the operations of the employer.

(c) UNPAID LEAVE PERMITTED.—Such leave may consist of unpaid leave, except as provided in subsection (d).

(d) RELATIONSHIP TO PAID LEAVE.—(1) If an employer provides paid family leave for fewer than 18 workweeks, the additional weeks of leave added to attain the 18-workweek total may be unpaid.

(2) An employee or employer may elect to substitute any of the employee's paid vacation leave, personal leave, or family leave for any part of the 18-week period.

(e) FORESEEABLE LEAVE.—(1) In any case in which the necessity for leave under this section is foreseeable based on an expected birth or adoption, the employee shall provide the employer with prior notice of such expected birth or adoption in a manner which is reasonable and practicable.

(2) In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee—

(A) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee's son, daughter, or dependent parent, and

(B) shall provide the employer with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

SEC. 104. TEMPORARY MEDICAL LEAVE REQUIREMENT.

(a) IN GENERAL.—(1) Any employee who, because of a serious health condition, becomes unable to perform the functions of such employee's position, shall be entitled to temporary medical leave. Such entitlement shall continue for as long as the employee is unable to perform such functions, except that it shall not exceed 26 workweeks during any 12-month period.

(2) Such leave may be taken intermittently when medically necessary.

(b) UNPAID LEAVE PERMITTED.—Such leave may consist of unpaid leave, except as provided in subsection (c).

(c) RELATIONSHIP TO PAID LEAVE.—(1) If an employer provides paid temporary medical leave or paid sick leave for fewer than 26 weeks, the additional weeks of leave added to attain the 26-week total may be unpaid.

(2) An employee or employer may elect to substitute the employee's accrued paid vacation leave, sick leave, or medical leave for any part of the 26-week period.

(d) FORESEEABLE LEAVE.—In any case in which the necessity for leave under this section is foreseeable based on planned medical treatment or supervision, the employee—

(1) shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the employer, subject to the approval of the employee's health care provider, and

(2) shall provide the employer with prior notice of the treatment or supervision in a manner which is reasonable and practicable.

SEC. 105. LIMITATION ON COMBINED LEAVE PERIODS.

An employer may limit the combined number of workweeks of family leave and temporary medical leave provided under this title to not less than 36 workweeks during any 12-month period.

SEC. 106. CERTIFICATION.

(a) IN GENERAL.—An employer may require that a claim for family leave under section 103(a)(1)(C), or temporary medical leave under section 104, be supported by certification issued by the health care provider of the son or daughter, or of the employee, whichever is appropriate. The employee shall provide a copy of such certification to the employer.

(b) SUFFICIENT CERTIFICATION.—Such certification shall be sufficient if it states—

(1) the date on which the serious health condition commenced,

(2) the probable duration of the condition, and

(3) the medical facts within the health care provider's knowledge regarding the condition.

(c) EXPLANATION OF INABILITY TO PERFORM JOB FUNCTIONS.—The employer may request that (for purposes of section 107(c)) certification under this section that is issued in any case involving leave under section 104 include an explanation of the extent to which the employee is unable to perform the functions of the employee's position.

(d) SECOND OPINION.—The employer may require, at its own expense, that the employee obtain the opinion of a second health care provider concerning any information certified under subsection (b).

SEC. 107. EMPLOYMENT AND BENEFITS PROTECTION.

(a) RESTORATION TO POSITION.—(1) Upon return from leave under section 103 or 104, the employee shall be entitled—

(A) to be restored by the employer to the position of employment held by the employee when the leave commenced, or

(B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) The taking of leave under this title shall not result in the loss of any employment benefit accrued before the date on which the leave commenced.

(3) Except as provided in subsection (b), nothing in this section shall be construed to entitle any restored employee to (A) the accrual of any seniority or employment benefits during any period of leave, or (B) any right, employment benefit, or position of employment other than any right, employment benefit, or position to which the employee would have been entitled had the employee not taken the leave.

(b) MAINTENANCE OF HEALTH BENEFITS.—During any period an employee takes leave under section 103 or 104, the employer shall maintain coverage under any group health plan (as defined in section 162(i)(3) of the Internal Revenue Code of 1954) for the duration of such leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously from the date the employee commenced the leave until the date the employee is restored under subsection (a).

(c) NO BAR TO AGREEMENT CONCERNING ALTERNATIVE EMPLOYMENT.—Nothing in this title shall be construed to prohibit an employer and an employee with a serious health condition from mutually agreeing to alternative employment for the employee throughout the duration of such condition. Any such period of alternative employment shall not cause a reduction in the period of temporary medical leave to which the employee is entitled under section 104.

SEC. 108. PROHIBITED ACTS.

(a) INTERFERENCE WITH RIGHTS.—(1) It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this title.

(2) It shall be unlawful for any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this title.

(b) INTERFERENCE WITH PROCEEDINGS OR INQUIRIES.—It shall be unlawful for any person to discharge or in any other manner discriminate against any individual because such individual—

(1) has filed any charge, or has instituted or caused to be instituted any proceeding, under or related to this title,

(2) has given or is about to give any information in connection with any inquiry or proceeding relating to any right provided under this title, or

(3) has testified or is about to testify in any inquiry or proceeding relating to any right provided under this title.

SEC. 109. ADMINISTRATIVE ENFORCEMENT.

(a) IN GENERAL.—The Secretary shall issue such rules and regulations as are necessary to carry out this section, including rules and regulations concerning service of complaints, notice of hearings, answers and amendments to complaints, and copies of orders and records of proceedings.

(b) CHARGES.—(1) Any person (or person, including a class or organization, on behalf of any person) alleging an act which violates any provision of this title may file a charge respecting such violation with the Secretary. Charges shall be in such form and contain such information as the Secretary shall require by regulation.

(2) Not more than 10 days after the Secretary receives notice of the charge, the Secretary—

(A) shall serve a notice of the charge on the person charged with the violation, and

(B) shall inform such person and the charging party as to the rights and procedures provided under this title.

(3) A charge may not be filed more than 1 year after the last event constituting the alleged violation.

(4) The charging party and the person charged with the violation may enter into a settlement agreement concerning the violation alleged in the charge before any determination is reached by the Secretary under subsection (c). To be effective such an agreement must be determined by the Secretary to be consistent, generally, with the purposes of this title.

(c) INVESTIGATION; COMPLAINT.—(1) Within the 60-day period after the Secretary receives any charge, the Secretary shall investigate the charge and issue a complaint based on the charge or dismiss the charge.

(2) If the Secretary determines that there is no reasonable basis for the charge, the Secretary shall dismiss the charge and promptly notify the charging party and the person charged with the violation as to the dismissal.

(3) If the Secretary determines that there is a reasonable basis for the charge, the Secretary shall issue a complaint based on the charge and promptly notify the charging party and the respondent as to the issuance.

(4) After issuance of a complaint, the Secretary and the respondent may enter into a settlement agreement concerning a violation alleged in the complaint, except that any such settlement shall not be entered into over the objection of the charging party.

(5) If, at the end of the 60-day period referred to in paragraph (1), the Secretary—

(A) has not made a determination under paragraph (2) or (3),

(B) has dismissed the charge under paragraph (2), or

(C) has not approved a settlement agreement under subsection (b)(4) or has not entered into a settlement agreement under paragraph (4) of this subsection,

the charging party may elect to bring a civil action under section 110. Such election shall bar further administrative action by the Secretary with respect to the violation alleged in the charge.

(6) The Secretary may issue and serve a complaint alleging a violation of this title on the basis of information and evidence gathered as a result of an investigation initiated by the Secretary pursuant to section 111.

(7) The Secretary shall have the power to petition the United States district court for the district in which the violation is alleged to have occurred, or in which the respondent resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition, the court shall cause notice of the petition to be served upon the respondent, and the court shall have jurisdiction to grant to the Secretary such temporary relief or restraining order as it deems just and proper.

(d) RIGHTS OF PARTIES.—(1) In any case in which a complaint is issued under subsection (c), the Secretary shall, not more than 30 days after the complaint is issued, cause to be served on the respondent a copy of the complaint.

(2) Any person filing a charge alleging a violation of this title may elect to be a party to any complaint filed by the Secretary alleging such violation. Such election must be made before the commencement of the hearing.

(3) The failure of the Secretary to comply in a timely manner with any obligation assigned to the Secretary under this title shall entitle the employee to elect, at the time of such failure, to bring a civil action under section 110.

(4) Nothing in this section shall be construed to entitle the respondent to interfere with the performance of the functions assigned to the Secretary under this title, notwithstanding any failure by the Secretary to strictly comply with any requirements relating to the exercise of such functions.

(e) CONDUCT OF HEARING.—(1) The Secretary shall have the duty to prosecute any complaint issued under subsection (c).

(2) An administrative law judge shall conduct a hearing on the record with respect to any complaint issued under this title. The hearing shall be commenced within 60 days after the issuance of such complaint, unless the judge, in the judge's discretion, determines that the purposes of this Act would best be furthered by commencement of the action after the expiration of such period.

(f) FINDINGS AND CONCLUSIONS.—(1) After the hearing conducted under this section, the administrative law judge shall promptly make findings of fact and conclusions of law, and, if appropriate, issue an order for relief as provided in section 112.

(2) The administrative law judge shall inform the parties, in writing, of the reason for any delay in making such findings and conclusions if such findings and conclusions are not made within 60 days after the conclusion of such hearing.

(g) FINALITY OF DECISION; REVIEW.—(1) The decision and order of the administrative law judge shall become the final decision and order of the agency unless, upon appeal by an aggrieved party taken not more than 30 days after such action, the Secretary modifies or vacates the decision, in which case the decision of the Secretary shall be the final decision and the order of the agency.

(2) Not later than 60 days after the entry of such final order, any person aggrieved by such final order may seek a review of such order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

(3) Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

(h) COURT ENFORCEMENT OF ADMINISTRATIVE ORDERS.—(1) If an order of the agency is not appealed under subsection (g)(2), the Secretary may petition the United States district court for the district in which the violation is alleged to have

occurred, or in which the respondent resides or transacts business, for the enforcement of the order of the Secretary, by filing in such court a written petition praying that such order be enforced.

(2) Upon the filing of such petition, the court shall have jurisdiction to make and enter a decree enforcing the order of the Secretary. In such a proceeding, the order of the Secretary shall not be subject to review.

(3) If, upon appeal of an order under subsection (g)(2), the United States court of appeals does not reverse such order, such court shall have the jurisdiction to make and enter a decree enforcing the order of the Secretary.

SEC. 110. ENFORCEMENT BY CIVIL ACTION.

(a) RIGHT TO BRING CIVIL ACTION.—(1) Subject to the limitations in this section, an employee or the Secretary may bring a civil action against any employer to enforce the provisions of this title in any appropriate court of the United States or in any State court of competent jurisdiction.

(2) Subject to paragraph (3), a civil action may be commenced under this subsection without regard to whether a charge has been filed under section 109(b).

(3) If the Secretary—

(A) has approved a settlement agreement under section 109(b)(4), no civil action may be filed under this subsection if such action is based upon a violation alleged in the charge and resolved by the agreement, or

(B) has issued a complaint under section 109(c)(3) or 109(c)(6), no civil action may be filed under this subsection if such action is based upon a violation alleged in the complaint.

(4) Notwithstanding paragraph (3)(A), a civil action may be commenced to enforce the terms of any such settlement agreement.

(5)(A) Except as provided in subparagraph (B), no civil action may be commenced more than 1 year after the date on which the alleged violation occurred.

(B) In any case in which—

(i) a timely charge is filed under section 109(b), and

(ii) the failure of the Secretary to issue a complaint or enter into a settlement agreement based on the charge (as provided under section 109(c)(5)) occurs more than 11 months after the date on which any alleged violation occurred,

the employee may commence a civil action not more than 60 days after the date of such failure.

(6) The Secretary may not bring a civil action against any agency of the United States.

(7) Upon the filing of the complaint with the court, the jurisdiction of the court shall be exclusive.

(b) VENUE.—An action brought under subsection (a) in a district court of the United States may be brought—

(1) in any appropriate judicial district under section 1391 of title 28, United States Code, or

(2) in the judicial district in the State in which—

(A) the employment records relevant to such violation are maintained and administered; or

(B) the aggrieved person worked or would have worked but for the alleged violation.

(c) NOTIFICATION OF THE SECRETARY; RIGHT TO INTERVENE.—A copy of the complaint in any action by an employee under subsection (a) shall be served upon the Secretary by certified mail. The Secretary shall have the right to intervene in a civil action brought by an employee under such subsection.

(d) ATTORNEYS FOR THE SECRETARY.—In any civil action under subsection (a), attorneys appointed by the Secretary may appear for and represent the Secretary, except that the Attorney General and the Solicitor General shall conduct any litigation in the Supreme Court.

SEC. 111. INVESTIGATIVE AUTHORITY.

(a) IN GENERAL.—To ensure compliance with the provisions of this title, or any regulation or order issued under this title, the Secretary shall have, subject to subsection (c), the investigative authority provided under section 11(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)).

(b) OBLIGATION TO KEEP AND PRESERVE RECORDS.—Any employer shall keep and preserve records in accordance with section 11(c) of such Act and in accordance with regulations issued by the Secretary.

(c) REQUIRED SUBMISSIONS GENERALLY LIMITED TO AN ANNUAL BASIS.—The Secretary may not under the authority of this section require any employer or any plan, fund, or program to submit to the Secretary any books or records more than once

during any 12-month period, unless the Secretary has reasonable cause to believe there may exist a violation of this title or any regulation or order issued pursuant to this title, or is investigating a charge pursuant to section 109.

(d) SUBPOENA POWERS, ETC.—For the purposes of any investigation provided for in this section, the Secretary shall have the subpoena authority provided under section 9 of the Fair Labor Standards Act of 1938 (29 U.S.C. 209).

(e) DISSEMINATION OF INFORMATION.—The Secretary may make available to any person substantially affected by any matter which is the subject of an investigation under this section, and to any department or agency of the United States, information concerning any matter which may be the subject of such investigation.

SEC. 112. RELIEF.

(a) INJUNCTIVE.—(1) Upon finding a violation under section 109, the administrative law judge shall issue an order requiring such person to cease and desist from any act or practice which violates this title.

(2) In any civil action brought under section 110, the court may grant as relief any permanent or temporary injunction, temporary restraining order, and other equitable relief as the court deems appropriate.

(b) MONETARY.—Any employer that violates any provision of this title shall be liable to the injured party in an amount equal to—

(1) any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation, plus interest on the total monetary damages calculated at the prevailing rate, and

(2) an additional amount equal to the greater of (A) the amount determined under paragraph (1), or (B) consequential damages.

(c) ATTORNEYS' FEES.—The prevailing party (other than the United States) may be awarded a reasonable attorneys' fee as part of the costs, in addition to any relief awarded. The United States shall be liable for costs the same as a private person.

(d) LIMITATION.—Damages awarded under subsection (b) may not accrue from a date more than 2 years before the date on which a charge is filed under section 109(b) or a civil action is brought under section 110.

SEC. 113. NOTICE.

(a) IN GENERAL.—Each employer shall post and keep posted, in conspicuous places upon its premises where notices to employees and applicants for employment are customarily posted, a notice, to be approved by the Secretary, setting forth excerpts from, or summaries of, the pertinent provisions of this title and information pertaining to the filing of a charge.

(b) PENALTY.—Any employer that willfully violates this section shall be assessed a civil money penalty not to exceed $100 for each separate offense.

TITLE II—PARENTAL LEAVE AND TEMPORARY MEDICAL LEAVE FOR CIVIL SERVICE EMPLOYEES

SEC. 201. PARENTAL AND TEMPORARY MEDICAL LEAVE.

(a) IN GENERAL.—(1) Chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"SUBCHAPTER III—PARENTAL AND TEMPORARY MEDICAL LEAVE

"§ 6331. Definitions

"For purposes of this subchapter—

"(1) 'employee' means—

"(A) an employee as defined by section 6301(2) of this title (excluding an individual employed by the government of the District of Columbia); and

"(B) an individual under clause (v) or (ix) of such section;

whose employment is other than on a temporary or intermittent basis;

"(2) 'serious health condition' means an illness, injury, impairment, or physical or mental condition which involves—

"(A) inpatient care in a hospital, hospice, or residential medical care facility; or

"(B) continuing treatment, or continuing supervision, by a health care provider; and

"(3) 'child' means a biological, adopted, or foster child, stepchild, legal ward, or child of a de facto parent who is—

"(A) under 18 years of age; or

"(B) 18 years of age or older and incapable of self-care because of mental or physical disability.

"§ 6332. Parental leave

"(a) Leave under this section shall be granted on the request of an employee if such leave is requested—

"(1) because of the birth of a child of the employee;

"(2) because of the placement for adoption or foster care of a child with the employee; or

"(3) in order to care for employee's child who has a serious health condition.

"(b) Leave under this section—

"(1) shall be leave without pay;

"(2) may not, in the aggregate, exceed the equivalent of 18 administrative workweeks of the employee during any 24-month period; and

"(3) shall be in addition to any annual leave, sick leave, temporary medical leave, or other leave or compensatory time off otherwise available to the employee.

"(c) An employee may elect to use leave under this section—

"(1) immediately before or after (or otherwise in coordination with) any period of annual leave, or compensatory time off, otherwise available to the employee;

"(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

"(3) on either a continuing or intermittent basis; or

"(4) any combination thereof.

"§ 6333. Temporary medical leave

"(a) An employee who, because of a serious health condition, becomes unable to perform the functions of such employee's position shall, on request of the employee, be entitled to leave under this section.

"(b) Leave under this section—

"(1) shall be leave without pay;

"(2) shall be available for the duration of the serious health condition of the employee involved, but may not, in the aggregate, exceed the equivalent of 26 administrative workweeks of the employee during any 12-month period; and

"(3) shall be in addition to any annual leave, sick leave, parental leave, or other leave or compensatory time off otherwise available to the employee.

"(c) An employee may elect to use leave under this section—

"(1) immediately before or after (or otherwise in coordination with) any period of annual leave, sick leave, or compensatory time off otherwise available to the employee;

"(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

"(3) on either a continuing or intermittent basis; or

"(4) any combination thereof.

"§ 6334. Job protection

"An employee who uses leave under section 6332 or 6333 of this title is entitled to be restored to the position held by such employee immediately before the commencement of such leave.

"§ 6335. Prohibition of coercion

"(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with such employee's rights under this subchapter.

"(b) For the purpose of this section, 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

"§ 6336. Health insurance

"An employee enrolled in a health benefits plan under chapter 89 of this title who is placed in a leave status under section 6332 or 6333 of this title may elect to continue the employee's health benefits enrollment while in such leave status and arrange to pay into the Employees Health Benefits Fund (described in section 8909 of this title), through that individual's employing agency, the appropriate employee contributions.

"§ 6337. Regulations

"The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this sub-

chapter shall be consistent with the regulations prescribed by the Secretary of Labor under title I of the Parental and Medical Leave Act of 1986.".

(2) The table of contents for chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER III—PARENTAL AND TEMPORARY MEDICAL LEAVE

"6331. Definitions.
"6332. Parental leave.
"6333. Temporary medical leave.
"6334. Job protection.
"6335. Prohibition of coercion.
"6336. Health insurance.
"6337. Regulations.".

(b) EMPLOYEES PAID FROM NONAPPROPRIATED FUNDS.—Section 2105(c)(1) of title 5, United States Code, is amended by striking out "53" and inserting in lieu thereof "53, subchapter III of chapter 63,".

TITLE III—COMMISSION ON PAID FAMILY AND MEDICAL LEAVE

SEC. 301. ESTABLISHMENT.

There is established a commission to be known as the Commission on Paid Family and Medical Leave (hereinafter in this title referred to as the "Commission").

SEC. 302. DUTIES.

The Commission shall—

(1) conduct a comprehensive study of existing and proposed methods designed to provide workers with family leave and temporary medical leave and with full or partial salary replacement or other income protection during periods of such leave, and

(2) within 2 years after the date on which the Commission first meets, submit a report to the Congress, including legislative recommendations concerning implementation of such a system of salary replacement for family leave and temporary medical leave.

SEC. 303. MEMBERSHIP.

(a) COMPOSITION.—The Commission shall be composed of 15 members appointed not more than 60 days after the date of the enactment of this Act as follows:

(1) Three Senators shall be appointed by the majority leader of the Senate, in consultation with the minority leader of the Senate.

(2) Three members of the House of Representatives shall be appointed by the Speaker of the House of Representatives, in consultation with the minority leader of the House of Representatives.

(3) The Secretary of Health and Human Services.

(4) The Secretary of Labor.

(5) Seven members shall be appointed jointly by the majority leader of the Senate and the Speaker of the House of Representatives. Such members shall be appointed by virtue of demonstrated expertise in relevant family, temporary disability, and labor-management issues.

(b) VACANCIES.—Any vacancy on the Commission shall be filled in the manner in which the original appointment was made.

(c) CHAIRPERSON AND VICE CHAIRPERSON.—The Commission shall elect a chairperson and a vice chairperson from among its members.

(d) QUORUM.—Eight members of the Commission shall constitute a quorum for all purposes, except that a lesser number may constitute a quorum for the purpose of holding hearings.

SEC. 304. COMPENSATION.

(a) PAY.—Members of the Commission shall serve without compensation.

(b) TRAVEL EXPENSES.—Members of the Commission shall be allowed reasonable travel expenses, including a per diem allowance, in accordance with section 5703 of title 5, United States Code, when performing duties of the Commission.

SEC. 305. POWERS.

(a) MEETINGS.—The Commission shall first meet not more than 30 days after the date on which members are appointed, and the Commission shall meet thereafter upon the call of the chairperson or a majority of the members.

(b) HEARINGS AND SESSIONS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate. The commission may administer oaths or affirmations to witnesses appearing before it.

(c) ACCESS TO INFORMATION.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out this title. upon the request of the chairperson or vice chairperson of the Commission, the head of such agency shall furnish such information to the Commission.

(d) EXECUTIVE DIRECTOR.—The Commission may appoint an Executive Director from the personnel of any Federal agency to assist the Commission in carrying out its duties.

(e) USE OF SERVICES AND FACILITIES.—Upon the request of the Commission, the head of any Federal agency may make available to the Commission any of the facilities and services of such agency.

(f) PERSONNEL FROM OTHER AGENCIES.—Upon the request of the Commission, the head of any Federal agency may detail any of the personnel of such agency to assist the Commission in carrying out its duties.

SEC. 306. TERMINATION.

The Commission shall terminate 30 days after the date of the submission of its report to the Congress.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON OTHER LAWS.

(a) FEDERAL LAWS.—Nothing in this Act shall be construed to modify or affect any Federal law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or handicapped status.

(b) STATE AND LOCAL LAWS.—Nothing in this Act shall be construed to supersede any provision of any State and local law which provides greater employee family or medical leave rights than the rights established under this Act.

SEC. 402. EFFECT ON EXISTING EMPLOYMENT BENEFITS.

(a) MORE PROTECTIVE.—Nothing in this Act shall be construed to diminish an employer's obligation to comply with any collective-bargaining agreement or any employment benefit program or plan which provides greater family and medical leave rights to employees than the rights provided under this Act.

(b) LESS PROTECTIVE.—The rights provided to employees under this Act may not be diminished by any collective bargaining agreement or any employment benefit program or plan.

SEC. 403. ENCOURAGEMENT OF MORE GENEROUS LEAVE POLICIES.

Nothing this Act shall be construed to discourage employers from adopting leave policies more generous than any policies which comply with the requirements under this Act.

SEC. 404. REGULATIONS.

The Secretary shall prescribe such regulations as are necessary to carry out title I of this Act.

SEC. 405. EFFECTIVE DATES.

(a) TITLE III.—Title III shall take effect on the date of the enactment of this Act.

(b) OTHER TITLES.—(1) Except as provided in paragraph (2), titles I, II, and IV shall take effect 6 months after the date of the enactment of this Act.

(2) In the case of a collective bargaining agreement in effect on the date of the enactment of this Act, title I shall apply on the earlier of—

(A) the date of the termination of such agreement, or

(B) the date which occurs 12 months after the date of the enactment of this Act.

Amend the title so as to read:

A bill to entitle employees to family leave in cases involving the birth, adoption, or serious health condition of a son, daughter, or dependent parent and temporary medical leave in cases involving inability to work because of a serious health condition, with adequate protection of the employees' employment and benefit rights, and to establish a commission to study ways of providing salary replacement for employees who take any such leave.

INTRODUCTION

H.R. 4300 addresses a profound change in the composition of the workforce that has had a dramatic effect on families. Sixty percent

of all mothers are currently in the labor force, which is three times what it was thirty years ago. In the great majority of families today, all of the adult members work. The role of the family as primary nurturer and care-giver has been fundamentally affected by a new economic reality. Families are struggling to find a way to carry out the traditional role of bearing and caring for children and providing the emotional and physical support to their members during times of greatest distress. When families fail to carry out these critical functions, the societal costs are enormous.

In order to help families cope with the new demands of the work place, H.R. 4300 establishes a minimum standard that assures employees the availability of unpaid leave under special circumstances. It makes available to employees, up to eighteen weeks of leave, over a two year period, incident to the birth or adoption of a child, or to care for an employee's dependent child or parent with a serious health condition. Employees are also able to take up to 26 weeks a year of leave if they are unable to work because of a serious health condition. The bill provides that when possible, leave must be taken in a manner that accomodates an employer's needs.

The adjustments this legislation may sometimes require of employers are offset by savings in medical and child care costs as well as the broad societal benefit of strengthened families. Employers also benefit directly from the retention of loyal and skilled employees, including savings on recruitment, hiring, and training costs. Finally, the bill will help reduce the cost to both government and private charities of picking up the pieces when families fall apart.

We are constantly warned that it is necessary to find new and innovative ways to address broad societal concerns since we can no longer afford expensive government programs. An unpaid leave requirement is a cost-effective means of dealing with the essential concern of helping families to survive. H.R. 4300 is based on the belief that if families are to continue performing their traditional role, the minimum standards for family and medical leaves established in the bill are essential.

Committee Action

On March 4, 1986, Representative William Clay (D-Missouri) introduced H.R. 4300, the Parental and Medical Leave Act, a bill to entitle employees to parental leave in cases involving the birth, adoption or serious health condition of a son or daughter and temporary medical leave in cases involving the inability to work because of a serious health condition. The bill was referred jointly to the Committee on Education and Labor and the Committee on Post Office and Civil Service.

Prior to the introduction of family and medical leave legislation, the Select Committee on Children, Youth and Families, during 1984, conducted a comprehensive investigation of the issues involving families and child care. The Select Committee issued a report, entitled "Families and Child Care: Improving the Options", based upon the testimony of 160 witnesses at hearings held across the country. The Select Committee unanimously recommended that Congress review improving current leave policies, including the issue of job continuity.

On April 4, 1985, Representative Patricia Schroeder (D-Colorado) introduced H.R. 2020, the Parental and Disability Leave Act of 1985, which was the predecessor to H.R. 4300. H.R. 2020 required that employees be allowed parental leave in cases involving the birth, adoption or serious illness of a child and temporary disability leave in cases involving the inability to work due to nonoccupational medical reasons. The bill was referred jointly to the Committee on Education and Labor and the Committee on Post Office and Civil Service.

The Education and Labor Subcommittees on Labor-Management Relations and Labor Standards and the Post Office and Civil Service Subcommittees on Civil Service and Compensation and Employee Benefits held a joint oversight hearing on the issue of parental and disability leave on October 17, 1985. Testimony was presented by Ms. Lorraine Poole, Philadelphia, Pennsylvania; Ms. Joan Specter, councilwoman-at-large, Philadelphia, Pennsylvania; Ms. Wendy W. Williams, associate professor, Georgetown University Law Center, Washington, DC; Liberia Johnson, Charleston, South Carolina; Dr. Sheila B. Kamerman, professor of social policy and planning, Columbia University School of Social Work, New York, New York, accompanied by Dr. Alfred J. Kahn, professor of social policy and planning, Columbia University School of Social Work, New York, New York; Dr. T. Berry Brazelton, associate professor of pediatrics, Harvard Medical School, and chief, Child Development Unit, the Children's Hospital, Boston, Massachusetts; Mr. Stephen F. Webber, international executive board member, United Mine Workers of America; Ms. Kathleen McDonough, director, Corporate Issues, General Foods Corporation; and Mrs. Joan Krupa, chairwoman, Public Policy Committee, The Association of Junior Leagues, Inc.

On April 9, 1986, Senator Christopher Dodd (D-Connecticut) introduced S. 2278, the Parental and Medical Leave Act of 1986 in the Senate, S. 2278 was referred to the Committee on Labor and Human Resources.

The Committee on Post Office and Civil Service has jurisdiction over federal government employees, who are covered under Title II of H.R. 4300. The Post Office and Civil Service Subcommittee on Civil Service and Compensation and Employee Benefits held a joint legislative hearing on the bill on April 9, 1986. Testimony was presented by Mrs. Ruth Milam, workmen's compensation assistant, U.S. Department of Labor, speaking for herself and accompanied by Paul Milam; Mrs. Anne Barbara Wittig, technical publications editor, Department of the Army, speaking for herself; Dr. Joann Urquhart, cardiologists, formerly with the National Institutes of Health, speaking for herself; Mr. Joe Blue, manpower development specialist, U.S. Department of Labor, speaking for himself; Ms. Meryl Frank, director, Infant Care Leave Project, Yale Bush Center in Child Development and Social Policy; Dr. Lindsay Algers, perinatologist, University of Maryland; Ms. Marie Argana, president, Federally Employed Women; Ms. Barbara Hutchinson, women's director, American Federation of Government Employees, accompanied by Ms. Cecelia McCarthy; Ms. Patricia Thomas, legislative director, National Federation of Federal Employees; and Ms.

Cathy Overly, assistant director of legislation, National Treasury Employees Union.

The Committee on Education and Labor has jurisdiction over private sector employment and state and local government employees, who are covered under Title I of H.R. 4300. On April 22, 1986, the Education and Labor Subcommittees on Labor-Management Relations and Labor Standards held a joint legislative hearing on H.R. 4300. Testimony was presented by Ms. Iris Elliot, Chesterfield, Missouri; Ms. Frances Wright, Virginia Beach, Virginia; Mr. Thomas Donahue, secretary-treasurer, American Federation of Labor and Congress of Industrial Relations; Dr. Eleanor S. Szanton, executive director, National Center for Clinical Infant Programs; Ms. Meryl Frank, director, Infant Care Leave Project, Yale Bush Center in Child Development and Social Policy; Ms. Irene Natividad, national chairwoman, National Women's Political Caucus; Ms. Bonnie Milstein, co-chair, Civil Rights Task Force, Consortium of Citizens with Developmental Disabilities; Ms. Jeanne Kardos, director of employee benefits, Southern New England Telephone; Ms. Barbara Inkellis, general counsel, Disclosure Information Group; Ms. Irma Finn Brosseau, executive director, Business and Professional Women's Foundation; and Ms. Susan Hager, president, Hager, Sharp & Abramson, Inc., representing the U.S. Chamber of Commerce.

On May 8, 1986, the Subcommittee on Compensation and Employee Benefits, by voice vote, ordered H.R. 4300 favorably reported. On June 11, 1986, the Committee on Post Office and Civil Service, by a roll call vote of 18 to 0, ordered H.R. 4300 favorably reported.

On June 12, 1986, the Subcommittee on Labor-Management Relations ordered H.R. 4300 favorably reported by a roll call vote of 8–6. On June 24, 1986, the Committee on Education and Labor ordered H.R. 4300, as amended, favorably reported. An amendment in the nature of a substitute, offered by Congresswoman Roukema, was rejected by a vote of 13–19. An amendment in the nature of a substitute, offered by Subcommittee on Labor-Management Relations Chairman Clay, was then adopted by the Committee by a roll call vote of 22–10. Two amendments were offered by Congressman Bartlett to expand coverage to Congressional employees which were ruled out of order because they were outside of the jurisdiction of the Committee and therefore were not considered. The Committee favorably ordered H.R. 4300, as amended, by voice vote.

Background and Need for Legislation

The tensions between employment and family life, two of the vital concerns of most Americans, have always existed. Recent economic and social changes have significantly exacerbated the tensions. Private sector practices and government policies have failed to keep pace with and respond to these new realities, imposing a heavy burden on families, employees, employers and society as a whole. This bill provides a sensible response to the growing conflict between work and family by establishing a right to unpaid family leave and temporary medical leave for all workers.

The Need for Family Leave

The United States has experienced what can only be characterized as a demographic revolution with profound consequences for the lives of working men and women and their families. Today, ninety-six percent of fathers work and more than sixty percent of mothers also work. Female participation in the labor force has risen from 19 percent in 1900 to more than 52 percent today; 44 percent of the U.S. labor force is now female. Between 1950 and 1981, the labor force participation rate of mothers tripled. By 1981, a larger percentage of mothers of preschool aged children participated in the labor force than did the percentage of married women with no minor children in 1950 and all women in 1900. The fastest growing segment of this group is comprised of women with children under the age of three. Nearly 50 percent of all mothers with children under one year of age are now working outside of the home. And half of all children in two-parent families have both parents in the workforce.

Equally dramatic is the unprecedented divorce rate of fifty percent and the increase in out-of-wedlock births, which has left millions of women to struggle as heads of households, supporting themselves and their children in an era of high living costs. Women represent the sole parent in 16 percent of all families. At the same time, a majority of women workers remain in female intensive, relatively low paid jobs and are less likely than men to have adequate job protections and fringe benefits. Each of these phenomena, which affect women of all races, are most pronounced for Black and other minority women. Single women heads of households, who work full-time in the labor force, often cannot keep their families above the poverty line.

Another demographic change relevant to the leave needs of all employees involves the growing number of elderly in our society. Currently, more than 2.2 million family members provide unpaid help to ailing relatives. In the case of the elderly, the most common caregiver is a child or spouse. About 38 percent of those caring for elderly relatives are children, and 35 percent are spouses. The average age of persons caring for elderly family members is 57 years.

Similarly, the percentage of adults in the care of their working children or parents due to physical and mental disabilities is growing. There is a trend away from institutionalization, which has been shown to be cost ineffective and often detrimental to the health and well-being of persons with mental and physicial disabilities. Though independent living situations are often preferable, deinstitutionalization can result in increased care responsibilities for family members, many of whom are also of necessity wage earners. This trend toward home care is laudable because of the strong benefits it provides to the health and well-being of families; however, it can also add to the tension between work demands and family needs.

The significance of these demographic changes is apparent. Where men and women alike are wage earners, the crucial unpaid caretaking services traditionally performed by wives—care of young children, ill family members, aging parents—has become increasingly difficult for families to fulfill. Yet these functions—phys-

ical caretaking and emotional support, are performed best by families. Indeed, in many instances, only families can perform them adequately. Society has long depended on the family to meed these needs and being able to provide such care has supported and strengthened families. Depriving families of their ability to meet such needs seriously undermines the stability of families and the well-being of individuals, with both economic and social costs. Yet today, at a magnitude significantly greater than ever before, American business requires the services of women and men alike. Modern families have made painful sacrifices to adapt to the needs of business and to the demands of wage earning. Business must make some modest accommodations to the needs of working families, in order to preserve the most essential of the traditional functions of the family.

The testimony of individual working people before the Committee demonstrated the difficulties faced by today's working families. Lorraime Poole, an employee of a larger municipality, testified to her heartbreak when she could not accept a long-awaited adoptive baby that had become available to her. Her employer had told her that she would lose her job if she took time off from work to receive the child and the adoption agency would not place the child unless assured that she would take some time off to be with the child. Ms. Poole was left with no choice but decline the placement. Stephen F. Webber, a coal miner and member of the executive board of the United Mine Workers of America, after describing his union's efforts to negotiate for family leaves, stated:

> Caring for a seriously ill child presents special problems to working miners. Treatment centers for serious illnesses such as cancer are often located in urban centers, forcing families in rural communities to travel great distances. I think in particular, of one coal miner I know, whose child has cancer, and who must travel nearly 400 miles round trip each month from his rural home to take his child for treatment at a medical center in Morgantown, West Virginia.

His testimony included other compelling examples, including that of a miner whose five year old son became comatose after choking on a piece of food and required twenty-four hour a day care, care that the miner, a single parent and sole wage earner, had to provide or arrange. A working mother, Iris Elliot, described to the Committee the difficulties she faced as a full-time worker with a preschool aged son and a seriously ill infant. Her employer, a national corporation, had no family leave policy. Ms. Elliot was offered a 90 day personal leave, without pay or job protection, but she could not risk losing her position or health benefits as the sole medical insurance carrier for her family. She concluded her testimony by saying "No parent should ever have to be torn between nurturing their seriously ill child and reporting to work like I did."

Experts who testified before the Committee confirmed the importance of family leaves. Dr. T. Berry Brazelton, associate professor of pediatrics at Harvard, and Dr. Eleanor S. Szanton, executive director of the National Center for Clinical Infant Programs, provid-

ed support for a leave to care for infants, explaining, in the words of Dr. Szanton,

> While children require careful nurturing throughout their development, the formation of loving attachments in the earliest months and years of life creates an emotional "root system" for future growth and development. How are these attachments formed? Through the daily feeding, bathing, diapering, comforting and "baby talk" that are all communications of utmost importance in beginning to give the child the sense that life is ordered, expectable and benevolent . . . In short, these factors affect the baby's cognitive, emotional, social and physical development. . . . Once parents and babies do establish a solid attachment to each other, the transition to work and child care is likely to be easier for parents and for the child. Parents who have cared for their infant for several months are likely to understand a good deal about their child's unique personality and the kind of caregiver or setting which will be most appropriate. Babies, for their part, who have already begun the process of learning to love and trust their parents are better able to form—and to use—trusting, warm relationships with other adults.

Meryl Frank, director of the Infant Care Leave Project of the Yale Bush Center in Child Development and Social Policy, reported on the conclusions and recommendations of the Project's Advisory Committee on Infant Care Leave. The Advisory Committee echoed the views of Dr. Brazelton and Dr. Szanton, and concluded that the "infant care leave problem in the United States is of a magnitude and urgency to require immediate national action." The Advisory Committee, whose members include academics and professionals in child development, health and business, recommended a 6 month minimum leave, with partial income replacement for the first 3 months and benefit continuation and job protection for the entire leave period.

The Committee was also provided the recommendations of the Economic Policy Council of the United Nations Association of the United States of America (EPC). During 1984, the EPC, which is comprised of corporate executives, union presidents and academics, studied the economic and demographic trends transforming the family and labor force and issued a report in December of 1985 of its findings, entitled *Work and Family in the United States: A Policy Initiative.* The EPC recommended a 6–8 week job protected maternity leave, with partial income replacement; a 6 month unpaid, but job protected, parental leave; job protected disability leave for all workers; the provision of temporary disability insurance to all workers; and the establishment of a national commission on contemporary work and family patterns.

The Extent of Existing Family and Related Medical Leave Policies

Many of the various aspects of family and related medical leaves, particularly with regard to pregnancy and parenting, have been extensively studied. However, currently, there is still no comprehensive study of the range of family leaves provided by American busi-

nesses. Many employers provide "personal leave" which is often available for family crises such as the serious illness or death of a child or parent. Such leave is almost universally unpaid and highly discretionary. Employees sometimes are able to take their vacation leaves (a benefit that is usually paid) at times of such crises. Only a small percentage of employers have policies providing a leave specifically for purposes of caring for ill family members.

Considerable study and attention has been paid to the aspects of family and medical leave relating to pregnancy, maternity and less frequently, paternity. Such leave has been the subject of litigation since the early 1960's, based upon the Equal Protection Clause of the U.S. Constitution and Title VII of the Civil Rights Act of 1964, as women workers sought equal treatment in the work place. The amendment of Title VII in 1978, by the Pregnancy Discrimination Act (PDA), has especially had a significant impact on the perception of women as wage earners and on the availability and nature of both parental and medical leave. Under the PDA, as employer is prohibited from discriminating on the basis of pregnancy, childbirth and related medical conditions. The PDA further provides that "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work." 42 U.S.C. sec. 2000e–k.

This language requires that employers adhere to two basic principles. First, they must permit physically fit pregnant employees to continue to work just as any other physically fit employee would be permitted to work (traditionally, women were terminated or placed on mandatory unpaid leave early in pregnancy). Second, when they become physically unable to work because of a complication of pregnancy or due to childbirth and the recovery period following childbirth, they are entitled to any sick leave, disability, health insurance or other benefit extended to other employees who, because of a physical condition, are unable to work.

The result has been that employers, to comply with the law, permit pregnant women to work unless or until they are unable to work and then provide whatever compensation or leaves they provide to other employees temporarily unable to work for medical reasons. As a practical matter, this means that many pregnant employees work until they give birth and then are on medical leave (paid if the employer compensates other disabled workers) for the physical recovery period following childbirth (typically 6–8 weeks). Some employers provide an additional unpaid leave period following disability to allow a parent to stay home with a new baby. This additional "parental leave", if given, must, under Title VII, be available to parents of either sex.

In response to litigation and the influence of the PDA, thousands of companies have reevaluated their personnel policies and implemented policies responsive to the needs of their changed workforces. In addition, four of the five states which provide temporary wage replacement under a state disability insurance program (California, New Jersey, New York and Rhode Island) extended their coverage to pregnancy and childbirth related work disabilities. (The fifth state, Hawaii, included such coverage from the inception of its

state disability insurance program in 1969). These longstanding state programs have proven to be both successful and cost-effective wage replacement systems for workers who are unable to perform their jobs due to non-work related illnesses, injuries or other medical reasons.

Several of the recent studies on parental leaves were described to the Committee in hearings held in October 1985 and April 1986. Catalyst, a national non-profit research organization, conducted a survey of the policies of Fortune 1500 companies and issued its *Report on a National Study of Parental Leaves* in 1986. Catalyst reported that 95% of the survey's respondents offered short-term disability leave during a worker's (including a pregnant worker's) period of inability to work; 38.9% with full pay and 57.3% with partial pay. Of this 95%, 90.2% continued full fringe benefits during disability leave. Moreover, 51.8% of the responding companies offered some upaid leave to women for a parenting leave (as distinct from the disability leave) and guaranteed their right to return; 40% to the same job, nearly 50% to a comparable job. One third of these employers offered four to six months and 7.2% offeres over six months of family leave. Only 37% of these companies extended the parental leave right to fathers and often on a different (and less extended) basis than to mothers. Additionally, only 27.5% of the respondents offered benefits to workers who adopt children.

The Catalyst Survey found that approximately 75% of the companies granting both kinds of leaves rerouted the work of employees on leave and a large percentage of the companies hired temporaries to supplement their rerouting strategy or to fully take over the absent employee's work. Significantly, 86.4% of the respondents stated that setting up a leave period and arranging to continue benefits was relatively easy. As part of its report to corporations, Catalyst recommended that companies provide disability leave, with full or partial pay, and unpaid parental leave for up to 3 months, with reinstatement to the same or comparable position after any leave.

The employers who do provide these crucial leaves recognize the significant benefits that flow to employers from doing so. As Ms. Jeanne F. Kardos, director of employee benefits at Southern New England Telephone, explained in her testimony in support of this bill:

> There are several factors which caused us to develop our benefit philosophy with regard to maternity and parental care. Along with many leading companies in the country, we recognize that women with children are in the work force to stay. Whether they are single parents or not, they have special needs involving pregnancy and child-rearing. We've also responded to a heretofore ignored group—fathers who want to be involved with full-time child-rearing at some point after birth or adoption. The special needs of these parents and more than that, the benefits which accrue to them and their children from this early participation in child-rearing, cannot be ignored any more than the widely accepted need for medical or pension benefits.

> In addition, one of the most important concerns we share with our employees is an interest in their careers. It is clear that forcing them to choose between the children and their jobs, or to compromise on either, produces at least one loser—maybe two. Adequate disability and parental leave can solve these problems. The employee returns to the company when he or she is prepared to do so, and the company retains an important asset.
>
> Lastly, we want our benefit plans to be recognized as progressive and competitive. We know that it will help in attracting talented individuals and if they are happy with their benefits, they'll want to stay with us.

The Catalyst Survey, because it focused on Fortune 1500 companies, overstates the protections offered to new parents by employers generally. A survey of 1000 small and medium sized firms, conducted in 1981 by Sheila Kamerman and Alfred Kahn of the Columbia University School of Social Work, provides an important companion to the Catalyst Study. According to Kamerman and Kahn, less than 40% of all working women received paid disability leave for the six to eight week recovery period after childbirth. This figure, which is far lower than the Fortune 1500 figures reported by Catalyst, probably reflects the fact that small and medium size employers are less likely to provide disability benefits to any worker. (These findings may also reflect the earlier survey date of the Columbia Study, which was undertaken much closer in time to the April 1979 effective date of the PDA than was the Catalyst Survey; smaller employers may not yet have adjusted their policies at the time of the first survey.) Eighty-eight percent of the companies provided "maternity" leave, but only 72% formally guaranteed the same or comparable job and retention of seniority. Thirty-three percent of the respondents provided leaves of 2 months or less, 28 percent provided 3 months of leave, 19 percent provided 4–6 months and 8 percent provided over 6 months. Twelve percent granted leave but on a discretionary basis. Only 25 percent of the respondent firms said that they permitted men to take parental leave, and many of those companies did so only for a few days at the time of childbirth.

The Catalyst and Kamerman and Kahn studies, taken together, indicate that employees of large companies are far more likely to be provided with paid disability leave following childbirth, than are employees of small and medium sized firms. The small and medium size firms respond to new parent employees by providing unpaid "maternity leaves", a full third of which extend only for the period of the mother's physical inability to work. It is likely that many of those firms providing leave for that period of time also grant unpaid leave to other disabled employees and thus provide the same benefit for both pregnancy and non-pregnancy related disability. A significant percentage of both Fortune 1500 companies and the small and medium companies studied by Kamerman and Kahn treat fathers seeking parental leave less favorably than mothers, in clear violation of Title VII.

These studies, more fundamentally, indicate the wide variation among employers, large and small, in the provision of parental, as

distinguished from disability, leaves, and the inadequacy of many leave policies.

The inadequacy of existing leave policies is perhaps most clearly seen when the family and related medical leave policies of the United States are compared to those of the rest of the world. With the exception of the United States, virtually every industrialized country as well as many Third World countries have national policies which require employers to provide some form of maternity or parental leave. One hundred and thirty five coutries provide maternity benefits, 125 with some wage replacement. These policies are well established, with France, Great Britain and Italy having had laws requiring maternity benefits since before World War I, which are now part of more general paid sick leave laws providing benefits for all workers unable to work for medical reasons. Among the more industrialized countries, the average minimum paid leave is twelve to fourteen weeks with many also providing the right to unpaid, job-protected leaves for at least one year. Leave is provided either through a national paid sick leave system or as part of a national family policy designed to enhance and support families. The long-established practices of these countries stand in marked contrast to the complete lack in this country of a standard minimum policy for family leave.

The Need for Temporary Medical Leave

The need for a temporary medical leave policy arose long before the fundamental changes in the workforce previously discussed. Workers and their families have always suffered inordinately when fired for medical reasons. However, the changed demographics have dramatically added to the harm caused by the lack of such a policy. The once traditional family which depended on the salary of a sole wage earner was and is severely affected by the loss of the ill worker's job. But while this family has had a second parent available to help meet such emergencies, today a new class of workers exists without such backup support: single heads of household, who are predominantly women workers in low-paid jobs. For these women and their children, the loss of the woman's job when she is sick can have devastating consequences.

A poignant example of the harm inflicted when a seriously ill person is fired was recounted at the Committee hearings by Ms. Frances Wright. Despite 10 years of exemplary service as a retail manager of a clothing store in Virginia, she was fired after developing cancer of the colon. She initially needed three months off for surgical procedures. Later, although she made every effort to accommodate the employer's needs by scheduling chemotherapy treatments on weekends (keeping work loss to one day), and although she had been absent from work in her ten years with the company only two other times (for a total of three weeks), she was fired. The company did agree to pay her disability benefits and told her to file for Social Security disability benefits, despite the fact that her doctor believed she was able to work (an assessment with which Social Security agreed). The insurance company told her she could not work or she would lose her disability benefits. The two year interval before she was finally able to find new work was extremely difficult for her. As she said,

> Because of my illness, I lost my job, my self-esteem, my job satisfaction, as well as the continuity of a salary and benefits as a result of my job performance and seniority. I was angry and frustrated. I had to fight against becoming bitter. I had to fight to keep my enthusiasm, vitality desire to lead a productive and meaningful life based on my own self-motivation and productivity.

Similar examples come from lawsuits brought by pregnant workers. Many pregnant women have been fired when their employer refused to provide an adequate leave of absence. Thus, just when these women face medical and family expenses from the arrival of a new baby, they are forced out of their jobs.

These accounts illustrate the human and economic costs to the individual, the family, the employer and society when workers with serious health conditions are fired. The individual already beset with difficult medical problems must face a loss of self-esteem, along with loss of a job, salary, and accrued benefits. Families will be especially hard-hit with these problems, as they struggle to meet increased expenses with decreased income; and the large new category of single parent families will have the greatest difficulty.

Concurrently, the employer loses the skills of trained workers, incurs the costs of recruiting, hiring, training and paying replacement employees and may needlessly inflate disability or unemployment insurance payments. Employers who have expressed concern over the costs imposed by this bill have often overlooked the costs of firing workers, and hiring replacement workers. Placing a worker on unpaid leave and hiring a temporary replacement worker or redistributing the work within the firm is often less expensive than firing the current employee and hiring a new replacement worker. In addition to these direct employer costs, society pays the costs of supporting families who have lost their jobs. The policy of firing workers with serious health conditions is in the long run economically counterproductive.

Indeed, as the Committee studied the problem, the evidence indicated that only a minority of firms actually take the harsh termination approach to such workers—further undermining the claim that this bill imposes unsupportable costs on employers. Rather, most employers can and do see that it is in their own economic interest to retain employees. A 1983 Bureau of National Affairs (BNA) report on personnel policies was particularly instructive. More than 90% of the firms surveyed in this report had provisions for unpaid leaves of absence. Ninety-seven percent of the firms provided such leaves of absence to plant and service workers, 96% provided unpaid leaves of absence to office and clerical workers, and 94% provided unpaid leaves of absence to management and exempt employees. The Bureau of National Affairs, Inc., Personnel Policies Forum, *Policies on Leave From Work* (June 1983). Further, the employee's extended physical health problems were cited as the most common reason for granting an unpaid leave of absence, the very purpose contemplated by the temporary medical leave. Close to 80% of the firms allowed leave for this reason, with nearly as high a proportion permitting unpaid leaves for alcohol or drug abuse re-

habilitation, or mental health problems. Moreover, the vast majority of firms permitted unpaid leave in excess of five months.

Data supportive of the BNA results come from the 1986 report by Catalyst, *Report on a National Study of Parental Leaves.* The catalyst survey revealed that many employers go beyond the requirements of this legislation by providing paid medical leave. Ninety-five percent of the companies surveyed by Catalyst grant short-term disability leave (38.9% fully paid, 57.3% partially paid, and 3.8% unpaid); 90.2% of them continue full benefits during the period 80.6% of them guarantee the same or a comparable job. For these companies, leave length appears to be tied to the employee's medical condition.

The account of Ms. Wright, recited above, reveals that companies that have fired workers with serious health conditions are perfectly able to take a more generous approach. When Ms. Wright's company was taken over by a new owner, she was hired back; and this time she had a recurrence of the cancer, she received five weeks of paid leave, and took her leave with the emotional and financial security of knowing her job was not at risk. In short, companies—even small companies—can comply with this legislation with no significant costs. Indeed, the Committee views this legislation as ultimately reducing the individual, family, employer, and societal costs of serious health conditions.

Another significant benefit of the temporary medical leave provided by this legislation is the form of protection it offers women workers who bear children. Since all employees who are temporarily unable to work due to serious health conditions are treated the same under the bill, it does not create the risk of discrimination against pregnant women which is posed by legislation which provides job protection only for pregnant women. Legislation for pregnant women only gives employers an economic incentive to discriminate against women in hiring policies; legislation helping all workers equally does not have this effect.

Finally, this legislation provides important job protection that workers with serious health conditions receive in most industrialized nations. Insuring that no worker loses his or her job because of personal misfortune in confronting serious health conditions is the minimum amount of humane support that our country must offer both its workers and the families that rely on them.

Committee Views

Introduction

In formulating this legislation, the Committee sought to achieve the three purposes set forth in section 2(b) of the bill: (1) to balance the demands of the work place with the needs of the family and in so doing, promote the stability and economic security of the family; (2) to entitle employees to take reasonable leave for certain family and medical reasons, and (3) to accommodate the legitimate interests of employers.

The Committee has listened to the testimony of many hard-working and dedicated employees who spoke of great economic and personal hardship resulting from inadequate leave provisions. Their testimony poignantly demonstrated the need for legislation to guar-

antee reasonable periods of time during which workers, without the risk of losing their jobs, can take leaves for serious health conditions, early child-rearing, and care-taking for family members in serious need.

H.R. 4300 establishes minimum standards requiring two types of leave, both unpaid. The first, a family leave, would be available for up to eighteen weeks over a two year period in the event of the arrival in an employee's family of a new child or for the care of a child or dependent parent with a serious health condition. The second, a temporary medical leave would be available for up to 26 weeks when an employee is unable to perform the functions of his or her position because of a serious health condition.

The bill also seeks to accommodate employer needs. Small businesses with fewer than fifteen employees are excluded from coverage under the bill. Other accommodations include the requirement that employees give their employer reasonable notice of leave and where possible, make a reasonable effort to schedule leave so as not to disrupt unduly the operations of the employer.

Family Leave

H.R. 4300 makes available to employees up to 18 weeks of unpaid "family leave" over a two year period in the event of the birth or placement of a child with the employee for adoption or foster care or in order to care for a son or daughter or dependent parent who has a "serious health condition." These provisions allow employees to take time off from work to care for their children or parents during times of acute family need, secure in the knowledge that they can return to their jobs when the leave period is over. Family leave is gender neutral and available to employees of either sex, preserving the Committee's commitment to sex equality and the requirements of the Constitution.

The amount of time allowed for family leave is based on the period that child development experts suggest as a minimum for newborns and parents to adjust to one another. Dr. Brazelton, chief of the Child Development Unit at Boston's Children's Hospital, recommends a minimum of four and one half months, explaining that these early months involve crucial stages of development that are "predictable and are necessary for both the baby and for the parent before [there is] a secure attachment." This early period of adjustment provides a crucial opportunity for cementing a family. Such recommendations apply equally to adoption and foster parent placements where attachment, particularly if the child has been shifted among previous caretakers, is more difficult to achieve. In addition, parents require a sufficient period of time to make safe and adequate day care arrangements for their new child, often a challenging task given the inadequacy of existing day care options.

While 18 weeks is an abbreviated period by European standards, where the median *paid* leave is six months, that period comes closer to the two to three month norm for U.S. companies without falling below the level of minimum adequacy for meeting basic family needs. Employers are, of course, free to and are encouraged to provide longer leaves.

The availability of 18 weeks to care for a son or daughter or dependent parent with a serious health condition is also essential

during such times of compelling family need. For example, a child or parent incapable of self-care who must undergo major surgery may require extensive care while preparing for, undergoing and recovering from the surgery. Family members with terminal illnesses desperately need not only the physical care but also the emotional support that only loved ones can provide. Moreover, employees caring for the terminal ill child or parent have their own compelling emotional need to provide care, comfort and support in this most trying of circumstances. The availability of up to eighteen weeks of job protected leave is critical in assisting families to survive such difficult times.

Temporary Medical Leave

H.R. 4300 provides for up to 26 weeks over a 12 month period of unpaid leave for workers temporarily unable to perform the functions of their positions due to serious health conditions. Leave would be available for the period of time an employee is "unable to perform the functions" of his or her position because of either the underlying health condition or the need to secure medical treatment or supervision for that condition.

The purpose of this provision is to help provide reasonable job security to workers faced with serious health conditions. The loss of a job at the onset of a serious health condition substantially increases the physical, emotional and financial strains on both the worker and the family which is economically depen dent upon the worker's income. Moreover, a worker who has lost a job due to a serious health condition often faces future discrimination in finding a job which has even more devastating consequences for the worker and his or her family.

The families most severely affected by the loss of a job for health reasons are single-earner families with dependent children, which includes both the traditional family, consisting of a wage earner and a homemaker, and the single parent family. The loss of the sole wage earner's job at a time of high medical bills and emotional trauma can push the family into bankruptcy, homelessness, or at a minimum, the societal welfare system. These dire consequences also face dual-earner families who often depend on both incomes to meet basic necessities.

The temporary medical leave requirement is intended to provide basic, human assistance to a family when it is most in need. It will also help reduce societal costs now born by government and private charity. Individuals or families with a member who is jobless because of a serious health condition are likely candidates for public assistance or other charitable relief. Holding a job open for a reasonable period of time, significantly improves the chances of an employee's recovery. Not only does such a recovery restore families, but it also results in significant cost savings to the social service system, since the family can now be supported by a wage earner, rather than government or private charity. In addition to being humane, a national leave policy is cost effective.

Amendments Adopted in Committee to Accommodate Business Concerns

In seeking ways to help today's working families, we have been mindful of the concerns expressed by members of the business community. Some small employers have expressed concern for their ability, both financial and logistic, to provide family and medical leave. Representatives of the business community have said there is a need for adequate notice before leave is taken, for a reasonable "probationary period" before new employees become eligible for leave, and for a medical certification requirement to prevent abuse of the health-related leaves. In order to accommodate each of these concerns as well as others, several modifications to H.R. 4300 were adopted during the Committee mark-up. The modifications reflect the legitimate interests of employers and will assist employers in complying with the bill.

The Committee expanded the small employer exemption under the Act. It raised from 5 to 15, the number of workers a business need employ to be covered by the Act, bringing the bill's coverage into line with that of another federal statute establishing employee rights, Title VII of the Civil Rights Act of 1964. The exemption of small employers with less than fifteen employees excludes more than one fifth of the private sector workforce. This is a substantial concession to the particular needs of small business. A geographic limitation of 200 miles, for determining whether the bill covers separate facilities of an employer, has also been added. In making these changes, we have recognized that small employers face special difficulties in providing job protected leave.

The Committee also placed a limitation on the total amount of leave an employer is required to provide in one year. Over a one year period, the total amount of both family and medical leave available to an employee is 36 weeks. In addition, the entitlement to family leave for the arrival of a new child in the family was limited to the twelve month period following the birth or placement of the child.

The Committee also included provisions which would require an employee to notify an employer of his or her intent to take a leave when the necessity for either family or medical leave is foreseeable. When possible, the employee is required, subject to the approval of the health care provider, to make a reasonable effort to schedule the leave so as not to disrupt unduly the operations of the employer. Similarly, an employee who elects to take family leave on a reduced leave schedule must meet the same "no undue disruption" standard.

The bill now includes a further medical certification requirement. In addition to the provision in the original bill requiring certification of a serious health condition, the bill now entitles an employer to require that an employee obtain the opinion of a second health care provider. Finally, the bill was amended in Committee to require that an employee must be on the job for the earlier of three consecutive months or 500 hours before gaining eligibility for leave under the bill.

The safeguards added to the bill in Committee further assure the bill will result in long term savings for employers. The expense of

securing temporary replacements is more than offset by the savings realized by retaining the services and commitment of trained employees. The retention of a loyal workforce has been shown to result in productivity gains as well as in savings on costs for recruiting, hiring, and training replacement workers. It is for these reasons that a large number of employers are already providing the job-guaranteed leaves required under H.R. 4300.

It is the Committee's belief that the modifications of the original bill properly accommodate the legitimate concerns of the business community while providing America's working families with basic leave and job security rights when they face serious family crises. By setting a uniform national minimum standard for family and medical leave, this bill mandates a crucial accommodation of work to family. It does so in a manner that is in the interest of employers as well as employees and their families.

EXPLANATION OF THE BILL

Family Leave

The bill provides for up to eighteen weeks of family leave over a two year period incident to the birth, adoption or placement of a foster child and in order to care for a child, a dependent son or daughter over the age of eighteen or a dependent parent who has a serious health condition.

The phrase "in order to care for", in section 103(a)(1)(C), should be read broadly to include both physical and psychological care. Parents provide for greater psychological comfort and reassurance to a seriously ill child than others not so closely tied to the child. In some cases there is no one else other than the child's parents who could care for him or her. The same is often true for adult children caring for the seriously ill dependent parent. Employees are thus assured the right to a period of leave to attend to their child's or dependent parent's basic needs, both during periods of inpatient care and during periods of home care, when such child or parent has a serious health condition.

A father, as well as a mother, can take family leave because of the birth or serious health condition of his child; a son as well as a daughter is eligible for leave to care for a dependent parent. Such leave can be taken at the same time, on an overlapping basis, or sequentially, as long as it is taken "because of" one of the circumstances specified in section 103(a). The provision makes it possible, among other things, for a father to take a family leave during his wife's childbirth and recovery, an especially crucial time, whether the wife is a homemaker or an employee on temporary medical leave. More generally, it permits families to choose which parent will attend to extraordinary family responsibilities in light of the family's preferences, needs, career concerns, and economic considerations.

The terms "son or daughter" and "parent" in section 103 must be read in light of the definitions of those terms in sections 101(10) and 101(11) of the bill. Many children in the United States today do not live in traditional "nuclear" families with their biological father and mother. Increasingly, the people who care for children and who therefore find themselves in need of workplace accommo-

dation for their child-care responsibilities are the child's adoptive, step, or foster parents, or their guardians, or sometimes simply their grandparent or other relative or adult. This legislation deals with such families by tying the availability of "parental" leave to the birth, adoption, or serious health condition of a "son or daughter," and then defining the term "son or daughter" to mean "a biological, adopted, or foster child, stepchild, legal ward, or child of a person standing in loco parentis . . ." Sec. 101(10). In choosing this definitional language, the Committee intends that the terms "son or daughter" and "parent" be broadly construed to ensure that the employees who actually have the day-to-day responsibility for caring for a"son or daughter" or who have a biological or legal relationship to that "son or daughter" are entitled to leave.

An employee is also eligible for family leave to care for a son or daughter over 18 years of age if they have a serious health condition and are "incapable of self-care because of a mental or physical disability." Sec. 101(10)(B). The bill recognizes that in special circumstances a child's need for parental care does not end when he or she reaches 18 years of age. In such circumstances, parents continue to have an active role in caring for their sons or daugthers over eighteen years of age. A dependent adult son or daugther who has a serious health condition and who is incapable of self-care because of a mental or physical disability presents the same compelling need for parental care as the child under 18 years of age with a serious health condition. The nature of the son or daughter's serious health condition which would warrant leave under this provision would be similar to those warranting leave to care for sons and daugthers under 18 years of age and dependent parents.

Section 103(a)(1)(C) also provides for a leave to care for an employee's "dependent parent" who has a serious health condition. The term "dependent" should not be narrowly interpreted to mean economic dependence. Rather, a "dependent" parent is one whose incapacity for self-care renders him or her dependent upon others for care. Under this provision, an employee could take leave to care for a parent of any age who, because of a serious mental or physical condition, is unable to provide for his or her own basic hygienic or nutritional needs or safety. Examples include a parent whose daily living activities are impaired by such conditions as advanced Alzheimer's disease, stroke, severe clinical depression or who is recovering from major surgery or in the final stages of a terminal illness.

A key provision of the family leave requirement is the reduced leave option set forth in section 103(b). A family leave may be taken on a reduced leave schedule for a period not to exceed 36 consecutive workweeks, which is twice the length of the full-time unpaid leave provided by the bill. "reduced leave schedule" is defined as "leave scheduled for fewer than an employee's usual number of hours per workweek or hours per workday." Sec. 101(7). The term "reduced leave schedule" was selected to indicate that part-time leave is to be "scheduled" rather than ad hoc. Employers need protection from unpredictability; they are entitled to expect employees on part-time leave to meet a fixed, pre-established, regular schedule of work. Thus, an employee might arrange to work regularly the first four days of the week or from nine to noon five

days a week; this schedule would be adhered to throughout the leave, unless, of course, employer and employee agree that changes in the schedule are appropriate.

An employee must schedule reduced leave so as not to "disrupt unduly the operations of the employer." Sec. 103(b)(B). To establish that a proposed reduced leave schedule would create undue disruption, employers must be able to show that providing leave on such a schedule would create a substantial interference with its business operations. The mere inconvenience of adapting to this reduced leave schedule is not sufficient to meet this standard.

The availability of reduced leave is crucial if the purposes of family leave are to be carried out in some instances. The leave provided by this bill is unpaid. It is thus, as a practical matter, unavailable to those families who simply cannot afford such a leave. If the choice is between full-time leave and no leave at all, these families, whose number is likely to be substantial, will be denied the important benefits of the leave. Reduced leave permits these families to experience some of the benefits of the bill while maintaining economic self-sufficiency. Moreover, we anticipate that reduced leave will often be perceived as desirable by employers who would often prefer to retain a trained and experienced employee part-time for the weeks that the employee is on leave rather than hire a full-time temporary replacement.

Family leave under section 103 shares a number of statutory terms, definitions and ancillary provisions with temporary medical leave under section 104. Most centrally, section 103 grants family leave to an employee for the care of a son, daughter or dependent parent who has a "serious health condition," a term defined for purposes of both section 103 and 104 in section 101(9). Moreover, both sections 103 and 104 provide that leave taken in connection with a serious health condition may be taken "intermittently when medically necessary." Sections 103(a)(3); 104(a)(20). Both provisions require, where the need for leave is foreseeable, that the employee provide the employer with prior notice "in a manner which is reasonable and practicable," 103(e)(1), (2)(B), 1049(d)(2); and that health treatment and supervision be scheduled so as not to disrupt unduly the operations of the employer. Sections 103(e)(2)(A), 104(d)(1). Finally, the certification requirement of section 106 applies not only to temporary medical leave under section 104, but also to family leave under section 103(a)(1)(C). In each of these instances of common language or common provisions, the policies, concerns and interpretations discussed in connection with the temporary medical leave requirement apply to family leave as well.

Section 103(d)(1) and (2), governing situations where an employer has a policy of paid family leave and providing for the substitution of paid leaves of various kinds for the unpaid leave mandated by this legislation, also has its parallel in section 104(c). Both provisions clarify that where an employer has a paid family or temporary medical leave policy, the remainder of the statutory period (up to 18 workweeks for family leave, up to 26 weeks for medical leave) may be unpaid. The provisions on substitution of other types of paid leave diverge with respect to the type of paid leave that may be substitued. While both permit the substitution of paid vacation leave, the family leave provision also allows substitution of paid

personal leave and family leave while the temporary medical leave provision allows substitution of paid sick leave or medical (temporary disability) leave, in cases where these apply to the condition in question. It is not the Committee's intent that this Act require an employer to provide paid sick leave or medical leave in any situation in which the employer does not normally provide such leave. In both cases, what is contemplated is that analogous leaves which are paid may be substituted for the bill's unpaid leave in order to mitigate the financial impact of wage loss due to family and temporary medical leaves. Of course, the employer may not trade shorter periods of paid leave specified in subpart (2) of sections 103(d) and 104(c) for the longer periods prescribed by the Act; read together, subsections (1) and (2) of 103(d) and 104(c) mean that an employee is entitled to the benefits of the shorter paid leave, plus any remaining leave time made available by the Act, on an unpaid basis.

Medical Leave

Unpaid temporary medical leave is provided only for workers with a "serious health condition." The definition of that term in section 101(9) is intentionally broad, to cover various types of physical and mental conditions.

With respect to an employee, the term "serious health condition" is intended to cover conditions or illnesses that affect an employee's health to the extent that he or she must be absent from work on a recurring basis or for more than a few days for treatment or recovery. Analogously, with respect to a son, daughter, or dependent parent, the term "serious health condition" is intended to cover conditions or illnesses that affect the health of the son, daughter, or parent such that he or she similarly unable to participate in school or in his or her regular daily activities.

The term "serious health condition" is not intended to cover short-term conditions for which treatment and recovery are very brief. It is expected that such conditions will fall within even the most modest sick leave policies. Conditions or medical procedures that would not normally be covered by the legislation include minor illnesses which last only a few days and surgical procedures which typically do not involve hospitalization and require only a brief recovery period. Complications arising out of such procedures that develop into "serious health conditions" will be covered by the Act. It is intended that in any case where there is doubt whether coverage is provided by this Act, the general tests set forth in this paragraph shall be determinative. Of course, nothing in the Act is intended or may be construed to modify or affect any federal law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or handicapped status, as section 401(a) clarifies.

Examples of serious health conditions include heart attacks, heart conditions requiring heart bypass or valve operations, most cancers, back conditions requiring extensive therapy or surgical procedures, strokes, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, injuries caused by serious accidents on or off the job, ongoing pregnancy, miscarriages, complications of or illnesses related to pregnancy, such as severe morning sickness, the need for

prenatal care, childbirth and recovery from childbirth. All of these conditions meet the general test that either the underlying health condition or the treatment for it requires that the employee be absent from work on a recurring basis or for more than a few days for treatment or recovery. They also involve either inpatient care or continuing treatment or supervision by a health care provider, and frequently involved both. For example, someone who suffers a heart attack generally requires both inpatient care at a hospital and ongoing medical supervision after being released from the hospital; the patient must also be absent from work for more than a few days. Someone who has suffered a serious industrial accident may require initial lengthy treatment in a hospital and periodic physical therapy under medical supervision thereafter. A cancer patient may need to have periodic chemotherapy or radiation treatments, and a patient with severe arthritis may require periodic treatment such as physical therapy. A pregnant patient is generally under continuing medical supervision before childbirth, may require several days off for severe morning sickness or other complications, receives inpatient care for childbirth and several days thereafter, and is under medical supervision requiring additional time off during the recovery period from childbirth. The legislative history of the Pregnancy Discrimination Act established that the medical recovery period for a normal childbirth is 4 to 8 weeks, with a longer period where surgery or other complications develop.

All of these health conditions require recurring absences or more than a few days away from work either for the condition or operation itself or for continuing medical treatment or supervision (e.g., physical therapy for accident victims or severe arthritis patients). Because continuing treatment or supervision may sometimes take the form of intermittent visits to the doctor, section 104(a)(2) of the bill specifically permits an employee to take the leave "intermittently when medically necessary." Only the time actually taken is charged against the employee's entitlement.

Section 104(d) of the bill accommodates employer needs in "any case in which the necessity for leave under this section is forseeable based on planned medical treatment or supervision", by requiring the employee to make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the employer's operations (subject to the approval of the employee's doctor or other health care provider) and in addition, to give the employer prior notice of the treatment or supervision in a manner which is reasonable and practicable. By "reasonable and practicable", the Committee intends for the employee to give notice, where possible, in sufficient time for an employer to make suitable arrangements for the employee's leave so as to avoid undue disruption to the employer.

This subsection (104(d)) clarifies that the section 104(a) requirement concerning the employee's inability to perform his or her job functions due to a serious health condition contemplates inability caused either by the underlying condition or by the need to receive medical treatment or supervision for it. Someone requiring treatment or supervision that can be scheduled to accommodate the employer's convenience obviously may not have a condition which at the time of making the scheduling decision prevents the employee

from performing the functions of the job (i.e., someone who needs a hernia operation or prenatal care or has early cancer). However, such an employee does need medical treatment or supervision and must at some point be absent from work to receive it, and hence is, at the time of receiving treatment or supervision, "unable to perform the functions of such employee's position." A narrower construction of the operative language of section 104, under which leave would be available only when the employee literally was physically or mentally incapacitated that he or she could not work, would deny protection for leaves for treatment or supervision essential to avoid that very incapacity or facilitate recovery from it, a construction that is contrary to common sense and would seriously undermine the purposes of the bill.

Another provision designed to accommodate employer needs is found in section 106, concerning certification of the serious health condition. This provision is designed as a check against employee abuse of the temporary medical leave. Thus, the employer may require the employee to provide certification by the employee's own health care provider who, under section 101(6), can be a person licensed to provide health care services or someone determined by the Secretary of Labor to be capable of providing such services.

The required content of the certification parallels those already in general use by insurers and is to include the date on which the condition began, its probable duration, and the medical facts concerning the condition. In addition, if the employee's serious health condition prevents him or her from performing his or her job functions, section 107(c) clarifies that the employer and employee are free to agree to an alternative job which the employee is able to perform despite the condition. In this instance, the employer is also free under section 106(c) to request (but not require) the employee to provide additional certification concerning the "extent to which the employee is unable to perform the functions of the employee's position." Section 107(c) specifies, however, that performance in the alternate job, if agreed to, does not constitute use of the temporary leave. Finally, under section 106(d), if the employer questions the original certification, the employer may at its own expense, require a second certification from a different health care provider chosen by the employee.

Under section 104(b), temporary medical leave may be unpaid, except to the extent that an employer already provides a paid temporary medical leave benefit. But section 104(c)(1) permits an employer who provides paid temporary medical leave for a period of fewer than 26 workweeks a year, to provide the additional weeks of leave needed to attain the full 26 week leave on an unpaid basis. Section 104(c)(2) also permits either the employee or the employer to elect to substitute any of the employee's accured paid vacation leave, sick leave, or medical leave for any part of the 26 week period, except that the employer is not required by this Act to provide paid sick leave or medical leave in any situation in which the employer does not normally provide such leave.

Employment and Benefits Protection

An employee taking either family or medical leave under this bill is "entitled, upon return from such leave," to restoration to his

or her previous position or an "equivalent position with equivalent benefits, pay, and other terms and conditions of employment." Sec. 107. This provision is central to the entitlement provided in this bill.

The Committee recognizes that it will not always be possible for an employer to restore an employee to the precise position held before taking leave. On the other hand, employees would be greatly deterred from taking leave without the assurance that upon return from leave, he or she will be reinstated to a genuinely equivalent position. Accordingly, the bill contains an appropriately stringent standard for assigning employees returning from leave to jobs other than the precise positions which they previously held. First, the standard of "equivalence"—not merely "comparability" or "similarity"—necessarily requires a strict correspondence to the terms and conditions of an employee's previous position. Second, the standard encompasses all "terms and conditions" of employment, not just those specified. This standard for evaluating job equivalence under section 107(a)(1)(B) parallels Title VII's standard for evaluating job discrimination in 42 U.S.C. sec. 2000e–2(a)(1), which prohibits "discriminat[ion] with respect to [an employee's] compensation, terms, conditions, or privileges of employment." For purposes of job equivalence, the Committee intends that the statutory language contained in section 107(a)(1)(B) of this Act shall be interpreted as broadly as similar language in section 703(a)(1) of Title VII.

Section 107(a)(2) makes explicit that an employer may not deprive an employee who takes leave of benefits accrued before the date on which the leave commenced. Nothing in the bill, however, should be construed to entitle an employee to the accrual of any seniority or benefits during any period of leave, except as provided in sec. 107(b) nor does this section entitle the restored employee to any right, benefit, or position of employment other than any right, benefit or position to which the employee would have been entitled had the employee not taken leave. Sec. 107(a)(3)(A)(B). This means that, for example, if but for being on leave, an employee would have been laid off, the employee's entitlement to be rehired is whatever it would have been had the employee not been on leave.

Section 107(b) requires an employer to maintain health insurance benefits during periods of family and medical leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously from the date the employee commenced the leave until the date of job restoration. The employer must maintain such coverage under any group health plan, as defined in section 162(i)(3) of the Internal Revenue Code of 1954. Nothing in this section requires an employer to provide health benefits if it does not already do so at the time the employee commences leave. Section 107(b) is strictly a maintenance of benefits provision. It should be noted, however, that if an employer establishes a health benefits plan during an employee's leave, section 107(b) should be read to mean that the entitlement to health benefits could commence at the point during the leave that the employee would have become entitled to such benefits if still on the job.

Maintenance of Health Benefits under Multiemployer Plans

Section 107(b) of the bill requires an employer to maintain coverage for the employee under any group health plan for the limited duration of the employee's family or temporary medical leave at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously from the date the employee commenced the leave until the date the employee is restored or, if earlier, the date on which his or her employment would have terminated. In the case of an employer that contributes to a multiemployer health plan (i.e., a health plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements), this requirement means that the employer by which the employee is employed when he or she takes the leave must continue contributing to the plan on behalf of the employee for the duration of the leave, as if the employee had continued in employment throughout the period of leave, unless the plan expressly provides for some other method of maintaining coverage for a period of family or temporary medical leave. The employee's benefit rights shall continue to be governed by the terms of the plan.

An employer may be obligated to contribute to a multiemployer health plan on behalf of its employees pursuant to a collective bargaining or other agreement, the terms of a plan, or a duty imposed by labor-management relations law. In any event, the Committee's intent is that where the method of providing group health plan coverage is through contributions to a multiemployer plan, the employer, unless the plan expressly provides otherwise, shall be obligated to continue contributing as if the employee were not on leave, notwithstanding any terms of any collective bargaining or other agreement to the contrary, and the employee shall look to the plan for his or her benefit rights.

The Committee recognizes that multiemployer plans need to receive contributions to finance benefit coverage. To ensure that a plan receives employer contributions, the obligation to contribute imposed by the bill, like other statutory obligations imposed by current law, shall be considered an obligation enforceable under 29 U.S.C. 1145 (relating to delinquent contributions to a multiemployer plan). This is not intended to preclude any other means of enforcement that the plan may provide or be entitled to pursue, but to vest a plan with an absolute right to invoke section 1145.

During the period of leave, the employer shall make contributions to the plan at the same rate and in the same amount as if the employer were continuously employed. Unless the contrary is clearly demonstrated by the employer (or by the plan, where appropriate), it shall be assumed that the employee would have continued working on the same schedule, at the same wage or salary, and otherwise under the same terms and conditions as he or she normally worked before going on leave. So, for example, if the employee normally worked 160 hours a month before taking family or temporary medical leave and the employer is obligated to contribute to a multiemployer health plan at the rate of $1.25 an hour, the employer would be obligated to continue contributing to the plan on behalf of the employee during the leave period at the rate

of $1.25 an hour for 160 hours a month, unless the employer clearly shows that the employee would have worked fewer hours, or the plan clearly shows that employee would have worked more hours, had he or she not been on leave.

A plan may adopt more specific rules governing an employer's contribution obligation during the leave period. For example, a plan may adopt a rule that an employee's normal number of work hours a month is the average number of work hours a month over the month (or a period of months) immediately prior to the employee's leave period. A plan could adopt rules which accommodate its particular reporting period (e.g., monthly, weekly). Also, the Committee intends that an employer shall provide the plan with whatever information is appropriate to assist the plan in determining an employee's status and whether the employer has an obligation to contribute on behalf of the employee.

The bill does not give an employee on family or temporary medical leave any greater rights or benefits under a multiemployer plan than an employee who is not on such leave. The same conditions of coverage shall apply to an employee on such leave as apply to an employee who is not on such leave from the employer. This includes any obligations and conditions with respect to employee contributions.

And, of course, these obligations apply only with respect to an "employee" within the meaning of section 101(3) of the bill; that is, an employee who has met the length of employment standard. Neither the employer nor the multiemployer plan has any obligation under the bill with respect to persons who are not "employees."

Prohibited Acts

The Committee recognizes the possibility that an employer, in certain circumstances, may seek to induce an employee not to take the entitled leave. The bill makes clear that an employer's interference with or attempts to restrain or deny the exercise of or the attempt to exercise any right provided by this Act is unlawful. This prohibition includes, but is not limited to, threats of reprisal or discrimination against any individual for opposing any practice made unlawful by this Act.

It is also unlawful for an employer to discharge or in any other manner discriminate against an employee because such employee has filed a charge, has instituted a proceeding under or related to the bill, has given or is about to give information in connection with any inquiry or proceeding relating to a right provided under this bill or has testified or is about to testify in any inquiry or proceeding relating to a right provided under this bill.

Miscellaneous

Title IV of the Act contains miscellaneous provisions concerning the effect of this legislation on other legislation and on existing employment benefits, encouraging more generous leave policies, regulations, and effective dates. Section 401(a) generally provides that nothing in the Act shall be construed to modify or affect in any way any Federal law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age or handicapped status. Thus, for example, nothing in this legislation may be read to affect

or amend Title VII of the 1964 Civil Rights Act, 42 U.S.C. Sec. 2000e *et seq.*, as amended by P.L. 95-555, 92 Stat. 2076 (1978).

The bill is also not intended to modify or to affect the Rehabilitation Act of 1973, as amended, or the regulations concerning employment which have been promulgated pursuant to that statute. Thus, the leave provisions of this bill are wholly distinct from the reasonable accommodation obligations of employers who receive Federal financial assistance, who contract with the Federal government, or of the Federal government itself. Employees with disabilities who meet essential job requirements may request such accommodations as job restructuring or the modification of equipment under the 1973 Act. *See, e.g.,* 45 C.F.R. Sec. 84.11 *et seq.* The purpose of the Act is simply to apply the leave provisions of the bill to all employees and employers within its coverage, and not to modify already existing rights and protections.

Section 401(b) deals with state and local laws, and makes clear that state and local laws providing greater leave rights than those provided herein (assuming state and local compliance with all other Federal laws) may continue to exist. Thus, for example, if a state were to guarantee a longer period of parental leave to all employees or to make it a paid leave, nothing in the Act could be read to supersede the state law.

Similarly, section 402(a) specifies that employers must continue to comply with collective bargaining agreements or employment benefit plans providing greater benefits than the Act. Conversely, section 402(b) makes clear that rights under the Act cannot be taken away by collective bargaining or employer plans.

Finally, section 404 provides that the Secretary of Labor may prescribe the necessary regulations for family and temporary medical leave, and section 405 sets forth the Act's effective dates. Generally, with two exceptions, the Act goes into effect six months after the date of enactment. However, the Title creating the Commission goes into effect immediately; and where there is a collective bargaining agreement in effect on the date of enactment, Title I (providing the unpaid family and temporary medical leave) goes into effect on either the date the agreement terminates, or one year after the date of enactment, whichever occurs earlier.

Administrative Provisions and Civil Remedies

The temporary medical and parental leave provisions are time specific in two important respects: first by the duration of the leave once granted, and second, if not granted in a timely manner the right is effectively lost. Cognizant of the time specific nature of the rights created, the bill contains an enforcement scheme designed to provide the most readily available and timely enforcement system possible. It is, therefore, the clear intent of the Committee that all time requirements set forth in the bill be strictly met, and that every effort be made to act expeditiously in resolving these cases.

The basic components of the Act's enforcement mechanisms are administrative investigation and hearings containing strict deadlines, alternative judicial enforcement, and the requirement of significant remedies for noncompliance. The availability of an administrative scheme means that aggrieved employees will have access to an already existing Department of Labor structure mandated to

investigate and prosecute their claims. At the same time, the imposition of strict time deadlines for action will avoid many of the problems of delay and inaction that often plague administrative enforcement.

Just as important is the relief provided. Providing for the award of attorney's fees to prevailing parties will ensure both that attorneys will be willing to represent employees to assert their rights under the Act and that employees will be deterred from violating the provisions of the law. Similarly, the provision of mandatory money damages serves the dual purposes of (1) ensuring that employees will be recompensed for their actual losses and the pain and suffering in being denied and thus having to initiate legal action in order to assert their rights and (2) adding to employers' incentives to comply.

An individual who believes he or she has been denied any of the rights guaranteed by the Act (including but not limited to restoration to the same or equivalent position following a temporary family or medical leave, or maintenance of health insurance benefits during the leave), or who has reason to believe that he or she will be denied any such rights, files a charge with an office of the Department of Labor. The charge must be filed within one year of the violation. Charges may be filed on behalf of a person or a class of individuals. The Secretary of Labor must investigate the charge and make a determination within 60 days; if the determination is that there is a reasonable basis for the charge, the Secretary must issue and prosecute a complaint. An on-the-record hearing before an administrative law judge ("ALJ") must begin within 60 days of the issuance of the complaint (unless the ALJ has reason to believe that the purposes of the Act would be best furthered by allowing more time to prepare for a hearing). The ALJ's findings, conclusions, and order for relief must be issued within 60 days of the hearing's end. The ALJ's decision becomes the final agency decision unless appealed and modified by the Secretary; the final agency decision may be reviewed in a federal court of appeals. If no such review is sought the Secretary may petition the appropriate federal district court for enforcement of the final agency order.

If the Secretary has dismissed or failed to take action on a charge within 60 days after filing, the individuals who filed the charge may elect to file an action directly in federal or state court, instead of continuing with the administrative enforcement procedure. The individual may also elect to proceed in court if the Secretary, at any point in the administrative procedure, fails to fulfill his or her obligations under the Act.

A charging party may also elect, before the commencement of the hearing, to be a party. This will allow that party to present evidence and testimony and to participate fully in the subsequent proceedings in the case. Such election does not, however, relieve the Secretary of his or her duty to prosecute the complaint.

At any time between the filing of a charge and the issuance of the ALJ's findings and conclusions, the parties may negotiate and agree to a settlement. Before the issuance of a compliant, any such agreement entered into by the charging party and the charged employer must be approved by the Secretary. After the complaint has been issued, it is the Secretary's duty to prosecute the complaint

and consequently any settlement agreement will be negotiated between the Secretary and the party charged, but such agreement may not be entered into over the objection of the charging party.

Commission on Paid Family and Medical Leave

Title III of this Act establishes a bipartisan commission, to be known as the Commission on Paid Family and Medical Leave, to conduct a comprehensive study of existing and proposed family or medical leave policies designed to provide workers with full or partial salary replacement or other income protection during periods of such leave. The Commission will be composed of members of the House and Senate, the Secretaries of Health and Human Services and Labor, and experts in the relevant family, disability and labor-management issues.

The Committee recognizes that wage replacement will, as a practical matter, often determine the extent to which low income workers will take the leave made available by the Act. The Committee has received the recommendations of the Yale Bush Center Advisory Committee on Infant Care Leave stating that parents should be entitled to at least three months of paid leave and the testimony of witnesses urging upon us the importance of paid leave.

Testimony suggested that a number of options exist for providing wage replacement. Dr. Kamerman mentioned several of the forms wage replacement takes in other countries and described disability insurance programs maintained by several states, including California, New York, New Jersey, Rhode Island and Hawaii. These state programs are funded by employee, employer or combined contributions and provide partial wage replacement to employees within the state when such employees become temporarily disabled and unable to work. The states include within their coverage disabilities arising in connection with pregnancy and childbirth.

It will be the task of the Commission to explore these and other options and to make recommendations to Congress within two years of its first meeting.

Committee Oversight Findings

In a very real sense the bill, H.R. 4300, contains the findings and recommendations of the Committee which resulted from a study and review of the subject. The sections of this report entitled "Committee Action" and "Background and Need for Legislation" list hearings held, witnesses heard and their testimony. Those sections mention some of the case histories and expert testimony that was heard. State laws and their impact, as well as the impact of the Pregnancy Disability Act (PDA), were studied. Such were the oversight activities that led the Committee to recommend passage of this new legislation.

Government Operations

No oversight findings have been presented to the Committee on this subject by the Committee on Government Operations.

Cost Estimate of the Congressional Budget Office

There follows a cost estimate submitted by the Congressional Budget Office, in accordance with the requirements of House Rule XI, clause 2(l)(3)(C) and XIII, clause 7, with which the Committee agrees.

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 29, 1986.

Hon. Augustus F. Hawkins,
Chairman, Committee on Education and Labor,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed Title I and Title III of H.R. 4300, the Parental and Medical Leave Act of 1986, as ordered reported by the House Committee on Education and Labor on June 24, 1986.

Title I of H.R. 4300 would allow a private sector employee, and any employee not covered under Title II, up to eighteen weeks leave without pay, in addition to and other leave, because of the birth of a son or daughter. The placement of a child for adoption or foster care with the employee would also entitle the employee to this leave. In addition, an employee could claim this leave to care for a seriously ill son or daughter. Title I would also permit the employee up to twenty-six work weeks of temporary medical leave in every twelve month period due to a serious health condition preventing the employee from performing the functions of his or her position.

The direct costs of providing this leave would be borne entirely by the private employer, and therefore would not result in costs being incurred by the federal government. However, enactment of this bill would entail additional administrative costs for the Department of Labor. For Title I of H.R. 4300, costs would vary with the number of claims filed. CBO assumes this Act would be administered similarly to the Pension and Welfare Benefit Program, or directly through the Wage and Hour Division.

The Pension and Welfare Benefit Program investigates activities of pension and welfare plans to assure compliance with statutory fiduciary standards, and issues interpretive rules and regulations under these standards. The Pension and Welfare Benefit Program currently processes approximately 1 million reports at a cost of about $29 million annually.

The Wage and Hour Division works to obtain compliance with the minimum wage, overtime, child labor, and other employment standards, and we assume could administer this Act as well. This Division handles approximately 500,000 compliance actions per year, as well as fulfilling its other administrative duties. Costs for this division are about $75 million annually. No data are available as to the estimated number of claims that would be filed under Title I of the Parental and Medical Leave Act. Costs would vary not only with the caseload, but also with the manner in which the Department of Labor assures compliance with these provisions.

Title III of this bill would establish the Commission on Paid Parental and Medical Leave to study ways of providing salary re-

placement for employees taking such parental and medical leave. Travel expenses, per diem allowances, and salary and overhead costs for an executive director and staff are also authorized, although no specific authorization level is stated in the bill. We estimate these costs could be about $350,000 per year over the two year life of the Commission. Costs of Title III most likely would begin in fiscal year 1987.

State and local governments would be responsible for any costs associated with providing their employees with the leave specified in Title I. These costs could vary with the frequency and duration of leave taken, and with the type and number of replacement personnel needed.

Please call me or have your staff contact Michael Pogue (226–2820) if you have further questions.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

INFLATIONARY IMPACT STATEMENT

Given the CBO cost estimate and pursuant to clause 2(l)(4) of Rule XI, the Committee estimates that this bill will not have a significant inflationary effect on prices and costs in the operation of the national economy.

SECTION-BY-SECTION ANALYSIS OF THE FAMILY AND MEDICAL LEAVE ACT OF 1986 (H.R. 4300, AS AMENDED)

Section 1. Short Title; Table of Contents

Designates this Act as the Family and Medical Leave Act of 1986 and sets out the table of contents.

Section 2. Findings and Purposes

States Congress' findings that the number of single-parent households and ~~two~~-parent households in which the single parent or both parents work is increasing significantly; it is important for fathers and mothers to be able to participate in early childrearing and the care of their children with serious health conditions; the lack of employment policies to accommodate working parents forces many individuals to choose between job security and parenting; and there is inadequate job security for employees who have serious health conditions that prevent them from working temporarily.

The purposes of this Act are to balance the demands of the workplace and the needs of families; to entitle employees to take reasonable leave, for family or medical reasons, without the risk of termination by employers; and to accommodate the legitimate interests of employers.

TITLE I—GENERAL REQUIREMENTS FOR PARENTAL AND MEDICAL LEAVE

Section 101. Definitions

Defines certain terms for purposes of the Act, including:

Employee—means any employee as defined in section 3(e) of the Fair Labor Standards Act (FLSA) who is employed for not less than 3 consecutive months or not less than 500 hours,

whichever occurs earlier, except that such term does not include Federal officers or employees covered under Title II of this Act.

Employer—means any person with 15 or more employees who is engaged in commerce; any successor in interest of an employer; and any public egency defined under section 3(x) of the FLSA.

Serious health condition—means an illness, injury, impairment, or physical or mental condition which involves (1) inpatient care in a hospital, hospice, or residential health care facility; or (2) continuing treatment or supervision by a health care provider.

Section 102. Inapplicability

This title does not apply to the employees of any facility of an employer at which there are less than 15 employees and when the combined number of employees employed by the employer within 200 miles of the facility is fewer than 15.

Section 103. Family Leave Requirement

Entitles an employee to 18 weeks of family leave during any 24 month period upon the birth, placement for adoption or foster care, or serious health condition of an employee's son or daughter or dependent parent. The entitlement to leave upon the birth or placement of a child expires at the end of the 12 month period after such birth or placement. In the case of a child or dependent parent with a serious health condition, leave may be taken intermittently when medically necessary. Such leave may be taken on a reduced leave schedule, not to exceed 36 consecutive weeks, and shall be scheduled so as not to disrupt unduly the employer's operations.

Family leave may be unpaid. If the employer provides paid family leave, such may be reduced from the 18 weeks and either the employee or employer may elect to substitute any accrued paid vacation leave, personal leave, or family leave for any part of the 18 week period. When the need for leave is foreseeable based on an expected birth or placement, the employee shall provide the employer with reasonable prior notice. When the need for leave is foreseeable based on planned medical treatment or supervision, the employee shall provide the employer with reasonable prior notice and make a reasonable effort to schedule leave so as not to disrupt unduly the employer's operations, subject to the approval of the health care provider of the employee's child or dependent parent.

Section 104. Temporary Medical Leave Requirement

Entitles any employee, who because of a serious health condition, becomes unable to perform the functions of his or her position to temporary medical leave not to exceed 26 weeks during any 12 month period. Such leave may be taken intermittently when medically necessary.

Medical leave may be unpaid. If the employer provides paid temporary medical leave or sick leave, such may be subtracted from the 26 weeks and either the employee or employer may elect to substitute accrued paid vacation leave, sick leave or medical leave for any part of the 26 week period. When the need for leave is fore-

seeable based on planned medical treatment or supervision, the employee shall provide the employer with reasonable prior notice and make a reasonable effort to schedule leave so as not to disrupt unduly the employer's operations, subject to the approval of the employee's health care provider.

Section 105. Limitation on Combined Leave Periods

An employer may limit the combined number of weeks of family and medical leave to not less than 36 weeks in a 12 month period.

Section 106. Certification

Permits an employer to require that a claim for leave be supported by medical certification. Such certification shall state: (1) the date on which the serious health condition commenced, (2) the probable duration of the condition, and the medical facts within the provider's knowledge regarding the condition. The employer may require, at its own expense, that the employee obtain a second opinion.

Section 107. Employment and Benefits Protection

Entitles any employee upon the return from leave to be restored to the position held when the leave commenced or to an equivalent position.

The employee's health benefits shall be maintained during any leave.

Section 108. Prohibited Acts

Makes it unlawful for any employer to interfere with, restrain or deny the exercise of any right provided under this title.

Section 109. Administrative Enforcement

Authorizes the Secretary of Labor to issue such rules and regulations as are necessary to carry out this section.

Any person alleging an act in violation of this title may file a charge with the Secretary. A charge must be filed within 1 year after the last event constituting the alleged violation.

After the charge is received, the Secretary has 60 days to investigate the charge and either issue a complaint or dismiss the charge. The Secretary and the respondent may enter into a settlement agreement concerning a complaint, except that such shall not be entered into over the objection of the charging party.

If at the end of the 60 day period, the Secretary has not issued a complaint, dismissed the charge or approved or entered into a settlement agreement, the charging party may bring a civil action as provided under this title. Such election shall bar further administrative action by the Secretary with respect to the violation alleged in the charge.

An administrative law judge shall commence a hearing on the record within 60 days of the issuance of the complaint. The decision and order of the administrative law judge shall become the final decision and order of the agency unless such is appealed by an aggrieved party within 30 days or the Secretary modifies or vacates the decision, in which case the decision of the Secretary is the final decision.

Any person aggrieved by a final order may obtain review in the United States court of appeals within 60 days after entry of such final order.

Section 110. Enforcement by Civil Action

Either an employee or the Secretary may bring a civil action against any employer to enforce the provisions of this title in any appropriate United States or state court of competent jurisdiction. A civil action may not be commenced if the Secretary has approved a settlement agreement or issued a complaint.

No civil action may be commenced more than 1 year after the date of the alleged violation.

Section 111. Investigative Authority

Provides the Secretary with investigative authority as empowered under section 11(a) of the FLSA.

Section 112. Relief

An employer found in violation of this title is liable to the injured party for any wages, salary, employment benefits, or other compensation denied to such employee, with interest and an additional amount equal to the greater of either (1) the above amount or (2) consequential damages.

The prevailing party, other than the United States, may be awarded reasonable attorney's fees.

Section 113. Notice

Each employer shall post a notice setting forth the pertinent provisions of this title. Any employer who wilfully violates this section is liable up to $100 for each offense.

TITLE II—PARENTAL LEAVE AND TEMPORARY MEDICAL LEAVE FOR CIVIL SERVICE EMPLOYEES

Extends coverage of the Act to federal government employees. (This title is within the jurisdiction of the Post Office and Civil Service Committee.)

TITLE III—COMMISSION ON PAID FAMILY AND MEDICAL LEAVE

Section 301. Establishment

Establishes the Commission on Paid Family and Medical Leave.

Section 302. Duties

The Commission shall study existing and proposed methods of salary replacement during periods of leave and submit a report to the Congress within 2 years with legislative recommendations.

Section 303. Membership

The Commission shall be composed of 15 members—3 senators, appointed by the majority leader of the Senate, in consultation with the minority leader of the Senate; 3 members of the House of Representatives, appointed by the Speaker of the House of Representatives, in consultation with the minority leader of the House of

Representatives; the Secretary of Health and Human Services; the Secretary of Labor; and 7 members appointed jointly by the majority leader of the Senate and the Speaker of the House of Representatives.

Section 304. Compensation

The members of the Commission shall be unpaid.

Section 305. Powers

The Commission shall meet within 30 days of appointment and shall hold such hearings as appropriate. The Commission may obtain from any federal agency information necessary to enable it to carry out this Act. The Commission may request use of the facilities, services, or personnel of any Federal agency to assist in carrying out its duties.

Section 306. Termination

The Commission shall terminate 30 days after the date of the submission of its final report to the Congress.

TITLE IV—MISCELLANEOUS PROVISIONS

Section 401. Effect on Other Laws

States that nothing in this Act shall be construed to affect any federal law prohibiting discrimination or any state law which provides greater family or medical leave rights.

Section 402. Effect on Existing Employment Benefits.

Nothing in this Act shall diminish an employer's obligation under a collective bargaining agreement or employment benefit plan to provide greater leave rights nor may the rights provided under this title be diminished by such an agreement or plan.

Section 403. Encouragement of More Generous Leave Policies

Nothing in this Act shall be construed to discourage employers from adopting leave policies more generous than required under this Act.

Section 404. Regulations

The Secretary shall prescribe such regulations as are necessary to carry out this Act.

Section 404. Effective Dates

This Act shall generally take effect 6 months after the date of enactment. In the case of a collective bargaining agreement, in effect on the date of enactment, the Act shall take effect upon the termination of the agreement, but not later than 12 months after enactment. The Commission on Paid Family and Medical Leave shall take effect on the date of enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * * * *

CHAPTER 21—DEFINITIONS

* * * * * * *

§ 2105. Employee

(a) * * *

(c) An employee paid from nonappropriated funds of the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Ship's Stores Ashore, Navy exchanges, Marine Corps exchanges, Coast Guard exchanges, and other instrumentalities of the United States under the jurisdiction of the armed forces conducted for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the armed forces is deemed not an employee for the purpose of—

(1) laws (other than subchapter IV of chapter [53] *53, subchapter III of chapter 63,* and sections 5550 and 7204 of this title) administered by the Office of Personnel Management; or

* * * * * * *

CHAPTER 63—LEAVE

SUBCHAPTER I—ANNUAL AND SICK LEAVE

Sec.
6301. Definitions.
6302. General provisions.
6303. Annual leave; accrual.
6304. Annual leave; accumulation.
6305. Home leave; leave for Chiefs of Missions; leave for crews of vessels.
6306. Annual leave; refund of lump-sum payment; recredit of annual leave.
6307. Sick leave; accrual and accumulation.
6308. Transfers between positions under different leave systems.
[6309. Repealed.]
6310. Leave of absence; aliens.
6311. Regulations.
6312. Accrual and accumulation for former ASCS county office employees.

SUBCHAPTER II—OTHER PAID LEAVE

6321. Absence of veterans to attend funeral services.
6322. Leave for jury or witness service; official duty status for certain witness service.
6323. Military leave; Reserves and National Guardsmen.
6324. Absence of certain police and firemen.
6325. Absence resulting from hostile action abroad.
6326. Absence in connection with funerals of immediate relatives in the Armed Forces.

SUBCHAPTER III—PARENTAL AND TEMPORARY MEDICAL LEAVE

6331. Definitions.
6332. Parental leave.
6333. Temporary medical leave.
6334. Job protection.

6335. Prohibition of coercion.
6336. Health insurance.
6337. Regulations.

Subchapter III—Parental and Temporary Medical Leave

§ 6331. Definitions

For purposes of this subchapter—

(1) "employee" means—

(A) an employee as defined by section 6301(2) of this title (excluding an individual employed by the government of the District of Columbia); and

(B) an individual under clause (v) or (ix) of such section; whose employment is other than on a temporary or intermittent basis;

(2) "serious health condition" means an illness, injury, impairment, or physical or mental condition which involves—

(A) inpatient care in a hospital, hospice, or residential medical care facility; or

(B) continuing treatment, or continuing supervision, by a health care provider; and

(3) "child" means a biological, adopted, or foster child, stepchild, legal ward, or child of a de facto parent who is—

(A) under 18 years of age; or

(B) 18 years of age or older and incapable of self-care because of mental or physical disability.

§ 6332. Parental leave

(a) Leave under this section shall be granted on the request of an employee if such leave is requested—

(1) because of the birth of a child of the employee;

(2) because of the placement for adoption or foster care of a child with the employee; or

(3) in order to care for employee's child who has a serious health condition.

(b) Leave under this section—

(1) shall be leave without pay;

(2) may not, in the aggregate, exceed the equivalent of 18 administrative workweeks of the employee during any 24-month period; and

(3) shall be in addition to any annual leave, sick leave, temporary medical leave, or other leave or compensatory time off otherwise available to the employee.

(c) An employee may elect to use leave under this section—

(1) immediately before or after (or otherwise in coordination with) any period of annual leave, or compensatory time off, otherwise available to the employee;

(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

(3) on either a continuing or intermittent basis; or

(4) any combination thereof.

§ 6333. Temporary medical leave

(a) An employee who, because of a serious health condition, becomes unable to perform the functions of such employee's position shall, on request of the employee, be entitled to leave under this section.

(b) Leave under this section—

(1) shall be leave without pay;

(2) shall be available for the duration of the serious health condition of the employee involved, but may not, in the aggregate, exceed the equivalent of 26 administrative workweeks of the employee during any 12-month period; and

(3) shall be in addition to any annual leave, sick leave, parental leave, or other leave or compensatory time off otherwise available to the employee.

(c) An employee may elect to use leave under this section—

(1) immediately before or after (or otherwise in coordination with) any period of annual leave, sick leave, or compensatory time off otherwise available to the employee;

(2) under a method involving a reduced workday, a reduced workweek, or other alternative work schedule;

(3) on either a continuing or intermittent basis; or

(4) any combination thereof.

§ 6334. Job protection

An employee who uses leave under section 6332 or 6333 of this title is entitled to be restored to the position held by such employee immediately before the commencement of such leave.

§ 6335. Prohibition of coercion

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with such employee's rights under this subchapter.

(b) For the purpose of this section, "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

§ 6336. Health insurance

An employee enrolled in a health benefits plan under chapter 89 of this title who is placed in a leave status under section 6332 or 6333 of this title may elect to continue the employee's health benefits enrollment while in such leave status and arrange to pay into the Employees Health Benefits Fund (described in section 8909 of this title), through that individual's employing agency, the appropriate employee contributions.

§ 6337. Regulations

The Office of Personnel Management shall prescribe regulations necessary for the administration of this subchapter. The regulations prescribed under this subchapter shall be consistent with the regulations prescribed by the Secretary of Labor under title I of the Parental and Medical Leave Act of 1986.

* * * * * * *

DISSENTING VIEWS ON THE FAMILY AND MEDICAL LEAVE ACT OF 1986

We oppose H.R. 4300 as reported. However, we do believe a strong case can be made that the vast changes which have occurred in the work force now make this the time to pass sensible legislation guaranteeing job security for those who must take leave due to certain family circumstances or because of a serious illness. Thus, while we are in favor of the general concept underlying this proposed legislation, we feel that H.R. 4300 goes entirely too far in the burdens it would impose on business, particularly small business. We hope that a sensible compromise can eventually be worked out which will help working families without placing unmanageable burdens on employers.

It is important, first, to stress that it is the changing nature of the work force which provides the impetus for legislation of this nature. We can no longer ignore the fact that in this country the majority of mothers with minor children work and furthermore that they work for economic reasons, just as men do. More specifically, 70 percent of mothers whose youngest children are between six and thirteen years old work, 60 percent of mothers of children between three and five work, and 48 percent of mothers with children under one year old work. Only 15.5 percent of American families now consist of a traditional family with a father, a mother who remains in the home and minor children. These same women who have moved into the work force in recent years are also the persons who traditionally provided home care for the elderly, whose population has been steadily increasing. In short, only a small minority of our families today have a person who does not work outside the home available to provide full-time care for family members. Thus, we recognize that there is a need for adjustments in employee benefits in order to accommodate working families. It is only humane to provide workers with the assurance that they will not be discharged from their jobs if they must take time off for the birth or adoption of a child, to care for a seriously ill child or parent, or because of their own serious illness.

At the same time, however, we should recognize the needs of employers to continue to operate their businesses on a productive basis. H.R. 4300 is seriously flawed because it does not sufficiently take the needs of the other important party affected by this legislation—the employer—into account.

Furthermore, the notion should be dispelled that it is either practical or desirable for this country to emulate the European model of requiring lengthy, paid leaves. We would be opposed to any legislation which failed to take into account our unique economic structure, thereby discouraging job creation and economic growth. We do believe that it is possible to carefully craft legisla-

tion which will provide needed job security, without destroying incentives for economic expansion.

The majority substitute which was reported out of Committee has certainly moved in the right direction in its incorporation of some changes to meet objections of the minority, moving closer to the Roukema substitute, but it has not gone far enough. In the following discussion we will point out the major problems with the Committee-approved legislation.

One of the foremost problems with H.R. 4300 is that the small employer exemption is grossly inadequate. The bill exempts only those employers who have less than fifteen employees. Throughout the hearings and during consideration of this legislation, one thing became clear: No one knows how lengthy mandated leave periods will affect the small employer because no one has ever studied the experience of small employers in handling these situations. We can safely assume, however, that any hardships caused by extended employee leaves will be intensified in companies with fewer employees. For example, it is entirely probable that a single employer will have several employees out on leave for various reasons at the same time. This could be crippling to a company which has only fifteen or twenty total employees. We do not believe it prudent to impose lengthy leave periods on very small employers, particularly since we have no concrete date on how this would affect them.

Nevertheless, we are concerned that we not preclude a large group of employees from receiving the protection afforded by this legislation. For example, raising the small employer exemption to employers of 100 or more employees would exclude 55 percent of the work force and 98 percent of the employers in this country. Because of these rather large exclusions, we believe that an appropriate response at this stage is to raise the employer exemption from fifteen to a substantially higher number and to study the effect of such legislation on small business. If, as a result of that study, we find a particular size range at which such extended leaves would not be overly burdensome, we would certainly consider adjusting the threshhold for exemption.

A second major problem with H.R. 4300 is that the required leave periods are too long. This bill would allow employees to take four months family leave within two years and six months medical leave within any one year. It would allow employees to combine these periods up to a maximum of 36 weeks per year. In other words, an employee would have the right to be absent 36 weeks in one year and 34 weeks in a consecutive year, and the employer would have to hold the same job open or be able to offer an equivalent job. Requiring employers to hold jobs open for such long time periods is obviously imposing a great burden. We are unwilling to hinder the operations of private employers in this drastic manner.

Moreover, H.R. 4300 is blind to a basic fact of business life—there are some employees, particularly managerial employees, who are absolutely indispensible to the effective operation of a business. This bill provides no flexibility for the employer to negotiate shorter leave periods with such key employees or, if necessary, to find a permanent replacement. Instead, it mandates the full leave period for everyone, without regard to the duties of the employee, without regard to whether or not it is possible to use a temporary replace-

ment, and without regard to whether or not the work can be done by assigning extra duties to others during the key employee's absence. We believe that any legislation in this area should contain a "business necessity exemption" which provides the employer with the ability to adjust a key employee's leave needs with its business needs. In this regard, the business necessity exemption contained in the Roukema substitute provides the necessary flexibility without overly incurring the unwanted side effect of increasing litigation due to vagueness. This exemption would allow an employer to deny reinstatement to any employee who is among the highest paid 20 percent of its employees if necessary to prevent substantial injury to its operations. Thus, while no employees are automatically exempted from coverage, the employer can, when necessary and on a case-by-case basis, exempt individual employees who work at the highest levels of the company.

We take issue with the bill's establishment of a Commission on Paid Family and Medical Leave, which is directed to study methods of providing salary replacement and to submit legislative recommendations to Congress. This mandate assumes that paid leave is desirable. Although we might not necessarily disagree, we are not sure that it is affordable and therefore believe it is premature to look toward implementing a system of paid leave before we have sufficient knowledge of the costs of unpaid leave. Further, if a Commission is to be established, it should have a broader mandate; it should be required to study the effects, including costs, on employers, particularly small employers.

To turn now to the positive changes made in H.R. 4300 as reported by the Committee, we are encouraged by the fact that it makes several revisions, including some contained in the Roukema substitute. First, it adds a provision permitting leave for the care of a seriously ill parent. This provision recognizes our nation's ever-increasing population of elderly over 75 years of age in need of home health care. It has been estimated, in fact, that by the year 2025, the number of older people needing health care will be more than twice the number of children under five years old. Thus, the need for leave for the care of seriously ill parents is growing. Simple equity compels this addition to the bill.

Another step in the right direction is the addition of a length of service requirement. We strongly feel, however, that the bill's three-month service requirement before an employee is entitled to leave should be increased to one year, as required by the Roukema substitute. We agree with the provision allowing the employer, as well as the employee, to substitute any paid leave the employee has for any part of the required leave periods, with the provision requiring prior notice when the necessity for taking leave is foreseeable, and with the provision requiring the scheduling of medical treatment around the employer's needs when medically possible. We are in favor of the addition of a time limit after birth or adoption beyond which family leave cannot be taken. We similarly are in favor of placing an overall cap on the combination of family and medical leave that can be taken within a particular time period. We believe the addition of a provision exempting small facilities of an employer which are in separate geographic areas is an important improvement. Finally, the provision allowing employers to re-

quire a second medical opinion is essential to provide employers with protection against those few employees who would attempt to abuse the rights provided in this proposed legislation.

Conclusion

In short, we support the guarantee of job security provided in H.R. 4300 for employees who must take time off due to certain family circumstances or because of a serious illness. The policy behind this legislation is, after all, a humane one which any country as advanced as ours should consider a basic protection—the protection against being discharged from your job because you are seriously ill, because you must take time off to have a baby or adopt a child or care for a seriously ill child or parent. At the same time, we emphasize our strong feeling that any legislation instituting this basic protection for employees must be carefully crafted with the needs of that other important party—the employer—in mind. We must stress our conviction that it is neither practical nor desirable for this country to emulate the European model of mandating lengthy, paid leaves.

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SEPARATE DISSENTING VIEWS ON H.R. 4300, THE FAMILY AND MEDICAL LEAVE ACT OF 1986

The Family and Medical Leave Act of 1986, H.R. 4300, addresses important issues regarding employee leave-taking to care for the sick and newborn. While well-intentioned, it nevertheless decides what type of leave programs are best for virtually all American employers and employees instead of letting those decisions be worked out on an individual basis. The trend in employee benefits for the past several years has been to establish flexible benefit programs permitting individual employees to choose the benefit package best suited to their needs. H.R. 4300 mandates rigid and inflexible requirements that must be a part of all employer benefit plans, regardless of whether the employees want it or will ever be able to use it.

There is no disagreement that funds available for benefits are limited. H.R. 4300 could place businesses around the country in a position of having to cut back on current benefits in order to pay for those mandated by the legislation. H.R. 4300 is anti-small business. It takes the leave policies of some of the nation's biggest businesses and imposes them on the nation's smallest, without regard to whether they are in a financial position to provide the liberal benefits required.

Further, H.R. 4300 represents the first time that serious consideration has been given to legislating national standards for major employee leave and health benefits. Yet, the Committee on Education and Labor is reporting H.R. 4300 after conducting limited hearings that failed to show that such broad Federal legislation is necessary. It has spent an inadequate amount of time studying this far-reaching proposal which would, upon passage, reshape the current benefit plans of virtually every business in the country.

At first blush, this legislation's flaws are not readily apparent. We urge our colleagues to read the following eight points carefully. In our opinion, H.R. 4300 could work to the detriment of many workers because of a number of reasons, including the reduction of other important benefits.

1. H.R. 4300 represents the first time that comprehensive national standards for major employee leave and health benefits have been given serious consideration in Congress.

H.R. 4300 presents something of a test to us as lawmakers. It poses a significant question—how deeply does Congress want to become involved in employee benefit issues? H.R. 4300 can legitimately be characterized as a Pandora's Box. For example, proponents of the bill have intimated that H.R. 4300, which calls for unpaid leave, will be followed in future years by legislation mandating paid leave. Congress has not yet legislated whether and to what extent health care coverage should be provided, the number of dollars that should be placed in employee pension plans or the

amount of life insurance that should be carried for each employee. Mandating the kind of rigid and inflexible leave requirements proposed by H.R. 4300, however, would place Congress in the midst of discussions that, until now, have wisely been left to negotiations between employees and employers.

Having crossed the Rubicon on developing private sector benefit policies with enactment of H.R. 4300, Congress will have great difficulty resisting future demands for more expansive employee benefits.

2. Requiring businesses to provide one particular benefit, in this case a leave benefit, will force many to cut back on other benefits in order to absorb the cost of those imposed by H.R. 4300.

The trend in employee benefit programs for the past decade has been away from providing a single benefit program to which all employees must subscribe, and towards serving up benefits "cafeteria style." Recognizing that a business can only allocate a certain dollar amount per employee for benefits, cafeteria plans offer a broad range of choices permitting each employee to select those that meet his or her individual needs.

Previously, two income families may have carried conventional plans that largely duplicated one another. With cafeteria plans, each wage earner can select a different plan which, when combined, give their family far broader protections that would otherwise be possible. At Procter & Gamble, for example, one of the choices available for employees is buying more vacation time or putting the benefit money away from child care.

The sharp contrast to prevailing practice, H.R. 4300 would legislate against the trend toward flexible benefits. It would require that each employee's benefit "budget" be spent on a benefit that the employee may not need nor want. We would urge our colleagues to ask single employees and married employees with no children whether they want to be legally required to have their benefit dollars used to purchase a parental leave benefit, when they may never be in a position to take advantage of it. Our colleagues may also wish to ask employees who have no dependent parents whether they would have any objection to a law requiring them to carry dependent care coverage. At a time when employees are demanding flexible benefit plans, H.R. 4300 would force less flexibility.

It should also be added that employers are not required to provide health benefits, and that H.R. 4300 only requires that those who currently do so to maintain those benefits while the employee is on leave. Enactment of H.R. 4300, therefore, could force a marginal business to reduce benefit costs by discontinuing them altogether.

3. The Committee of Education and Labor has not given this legislation adequate consideration.

This legislation is being brought to the floor of the House of Representatives on the basis of limited consideration by the Education and Labor Committee. Considering the immense impact that it will have on every form of business in the country, our failure to further explore the impact of this legislation is of great concern.

It would seem that a prerequisite to the Congress accepting a labor law proposed by the House Education and Labor Committee

is a comprehensive hearing record containing testimony clearly establishing that institutional abuse or inequity exists requiring a Federal legislative remedy. That has not happened with H.R. 4300.

All members of Congress are painfully aware of how many small businesses have failed recently, and how fragile many business situations—both large and small—are around the country. All of us know of companies in our districts which are barely surviving. It is ironic and telling that the Committee has spent far less time on hearings leading up to this Federally imposed leave policy than a benefits manager would spend designing one for his or her company.

Evidence of the superficial consideration given to the drafting of H.R. 4300 can be found in its numerous flaws. For example, H.R. 4300 confounds the application of Section 504 of the Rehabilitation Act of 1973 which protects persons with disabilities from discrimination in Federally assisted or conducted programs. Despite the fact that H.R. 4300's reemployment guarantees will require increased hiring and discharge of temporary employees, the bill fails to address the distortions that these discharges will create in employer experience ratings in unemployment compensation (UC) programs (experience ratings govern UC taxes; the less terminations, the lower the tax). Further, the legislation requires employers to continue health benefits for leave-taking employees, but does not address H.R. 4300's relationship with similar provisions contained in the COBRA legislation enacted earlier this year. Clearly, legislation as comprehensive as H.R. 4300 should not be rushed forward without its sponsors having first remedied conflicts with other laws.

4. A leave policy drafted in Washington, and applicable to hundreds of thousands of unique employer, employee, business situations around the country could result in a severe economic hardship to a number of businesses, particularly small ones.

In recent days the call from the House floor has been to improve the competitiveness of American industry. The notion of a Federally mandated leave policy stands in direct conflict to our recent deliberations.

One of the principal arguments used in support of this legislation is that other countries, particularly the European industrialized nations, have already enacted some form of parental leave laws. Those same nations, however, are no longer able to generate a significant number of new jobs for their citizens. The combined effect of the liberal European labor laws is such that few companies are willing any more to risk investment capital in Europe.

Many U.S. businesses are responding to the needs of working parents. A major study of the leave policies of 384 large U.S. corporations prepared by Catalyst, Inc., for example, demonstrated that 95% already provide short-term disability leave and over half give unpaid leave for maternity purposes, the bulk of which lasts three months or longer, with a reinstatement guarantee at the conclusion of the leave period.

Studies such as the one prepared by Catalyst, demonstrate that benefit programs are not uniform, but are designed to take into consideration the individual circumstances of each company. No such discretion is available under H.R. 4300's rigid requirements.

As explained in more detail in the majority's report, H.R. 4300 takes the employee relations policies of the IMB's of this country and imposes them by law on small typewriter repaid companies. It infers that a small office products company in a suburban mall has the same financial and staffing resources as a Fortune 500 corporation doing business world-wide. Small business enterprises employ 49% of the labor force. Last year, 65,000 small business failed. Should it be enacted, H.R. 4300 is likely to contribute to increased failures in future years in every part of the country.

5. H.R. 4300 will force a number of marginal businesses to restructure their hiring practices in such a way as to avoid, to the extent possible, hiring women of childbearing age and persons with past histories of serious health conditions and disabilities.

In order to meet the staffing obligations that would result from H.R. 4300's job guarantee provisions, employers may covertly discriminate in their hiring practices against those who seem likely to utilize the leave benefits. For example, if two equally qualified women were applying for a particular position, and one is of childbearing age while the other is not, H.R. 4300 would encourage the employer to hire the latter person. Similarly, if an individual with a history of serious illness or disability applies for a job, the liberal leave requirements of H.R. 4300 may result in the employer being hesitant to offer the individual a position, knowing that the law permits the individual to take six months leave during each twelve month period.

6. In a time of limited resources and an explosion of litigation in Federal courts, H.R. 4300 would create a new Federal bureaucracy to enforce the comprehensive requirements of this legislation and a new enforcement scheme involving the Department of Labor.

A Federally mandated program generates disputes over interpretation of eligibility criteria and the nature of the benefit provided. H.R. 4300, imposed by Congress on an unwilling business community, will result in a rash of disputes. In addition, yet another unwilling partner, the Department of Labor would be given the responsibility for reviewing all settlements and ensuring enforcement of all decisions. Considering the superficial consideration given the issue and the lack of definition of key terms, passage of H.R. 4300 will yield numerous court cases and administrative disputes.

7. It is simply inappropriate for the Congress to be mandating parental and medical leave polices for thousands of employers around the county when it is unwilling to accept those policies for itself.

The Committee would saddle American employers with mandatory leave and benefit requirements, but is unwilling to accept those same requirements for itself. H.R. 4300 would cover nearly all types of American business—private sector employees, Federal government employees, and employees of state, county and local governments. Conspicuously absent from this list are the employees of the United States Congress.

8. H.R. 4300 is not a "no-cost" bill.

The majority report states that the technical changes made during the markup process "further assure the bill will result in long term savings for employers." This statement is highly questionable and defies business practice. One of the fundamental premises of this legislation is that employers should be required to

continue the employee's health, disability and life insurance benefits while on leave and then restore the returning employee to the same or similar position at the conclusion of the leave. Employers will be required to hire temporary replacements at full pay and benefits, and then discharge them if another position cannot be found within the company. Because many of these replacement workers can only be promised a temporary position, employers may have to pay premium wage rates to get the quality of help that is needed. In many circumstances, the use of temporary help for long periods of time to replace key regular personnel, result in reduced productivity and the remaining employees having to work greater overtime.

In conclusion, we would stress that formulation of employee leave and benefit policies is best left to individual employers and their employees who are in a better position to identify the needs of all concerned. Despite its good intentions, and because of its numerous flaws, H.R. 4300 does not merit support.

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